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THE

LAW OF

PRIVATE CORPORATIONS

IN

PENNSYLVANIA

BY

ALBERT B. WEIMER
OF THE PHILADELPHIA BAR

IN TWO VOLUMES
VOLUME II

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1898

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CHAPTER XLIX.

BOURSE COMPANIES.

713. Corporations for Erecting a Bourse.
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Corporations for Erecting a Bourse.

713. In addition to the corporations for profit of the second class authorized to be created by the second section of an act entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, corporations may be created for the purpose of erecting and maintaining a bourse, or exchange hall, or other building, to be used in whole or in part as a bourse, or exchange hall, or as a meeting place for merchants or other business men, or for the exhibition of manufactured articles or natural products, and such corporations shall be governed as to the amount of their capital stock, and as to the par value of the shares thereof, as may be provided by the aforesaid act and the several supplements thereto.[1]

Contents of Certificate—Portion of Stock to be Exempt from Taxation.

714. Any corporation incorporated under the provisions of this act, or any corporation heretofore incorporated, for the purchase and sale of real estate, or for holding, leasing, and selling real estate, and accepting the provisions of this act, shall file in the office of the secretary of the Common-

[1] Act of June 10, 1893, Sec. 1, P. L. 417.

wealth a certificate specifying the date of incorporation and the Act of Assembly under which they were incorporated, and the lot or building, or the part or parts thereof to be used as a bourse or exchange hall, or for an exhibition hall for the display of manufactured articles or natural products, and the value thereof, and what proportion the value of the real estate used as a bourse or exchange hall, or for an exhibition hall for the display of manufactured articles or natural products bears to the entire capital stock of such corporation, and upon such proportion of their capital stock, corporations incorporated under this act or heretofore incorporated for the purchase and sale of real estate, or for holding, leasing, and selling real estate, and accepting the provisions of this act, shall be exempt from taxation.[2]

How Tax Upon Stock to be Assessed.

715. In assessing the tax upon the capital stock of corporations accepting the provisions of this act as provided in the second section thereof, that part of the capital stock of the corporation exempt from taxation shall bear the same proportion to its whole capital stock as the value of the real estate occupied as such bourse or exchange hall, or exhibition hall for the display of manufactured articles or natural products bears to the entire capital stock of such corporation.[3]

Auditor-General to Determine What Proportion of Stock to be Taxed.

716. It shall be the duty of the auditor-general to determine what part of the capital stock of such corporations shall be exempt from taxation, and from his decision an appeal shall lie as now provided by law in other cases involving questions of taxation.[4]

When Entire Capital Stock to be Taxed.

717. Any corporation accepting the provisions of this act, which shall in any year declare a dividend upon its entire capital stock, shall first file in the office of the auditor-general a certificate setting forth the intent of such corporation to pay a dividend as aforesaid, and thereupon the entire capital

[2] Act of June 10, 1893, Sec. 2, P. L. 417.
[3] Act of June 10, 1893, Sec. 3, P. L. 417.
[4] Act of June 10, 1893, Sec. 4, P. L. 417.

stock of such corporation shall be subject to taxation for such year.[5]

Penalty for Unlawful Sale of Real Estate.

718. It shall be unlawful for any corporation accepting the provisions of this act to sell, transfer, let, or lease any real estate specified in the certificate filed with the secretary of the Commonwealth as required by the second section of this act as intended to be used as a bourse or exchange hall, without first filing in the office of the secretary of the Commonwealth a certificate setting forth the intent of such corporation to sell, transfer, let or lease such real estate, and thereupon the entire capital stock of such corporation shall thereafter be subject to taxation. Provided, that if any corporation accepting the provisions of this act shall sell, transfer, let, or lease the real estate or the part thereof specified in the certificate filed with the secretary of the Commonwealth, as required by the second section of this act, as intended to be used as such bourse or exchange hall, or shall declare a dividend without first filing a certificate in the office of the auditor-general, as provided in the fifth section of this act, the entire capital stock of such corporation shall thereupon be liable to taxation, together with a penalty of 12 per centum upon that portion of the capital stock theretofore exempt from taxation under the provisions of this act.[6]

[5] Act of June 10, 1893, Sec. 5, P. L. 417.
[6] Act of June 10, 1893, Sec. 6, P. L. 417.

CHAPTER L.

CEMETERY COMPANIES.

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Power to Incorporate.

719. [Corporations may be formed] for the maintenance of a public or private cemetery.[1]

Incorporation by Courts.

720. The courts have jurisdiction under the Act of April 29, 1874, to grant a charter to a cemetery company. It is no objection to this power that cemetery companies necessarily deal in real estate.[2]

An application for a charter for a cemetery company need not contain a specific location of the land which is to be used

[1] Act of April 29, 1874, as amended by Act of April 17, 1876, Sec. 2, P. L. 30. Cemetery companies are of the first class.

[2] Oakland Cemetery Co., 12 Pa. C. C. R. 145 (1891); *In re* Lutheran Church, 6 Montgomery Co. Rep. 13 (1889); Lake Wynola Association, 3 Pa. C. C. R. 626 (1887).

for the cemetery. "To require a purchase of land before the incorporation might, in many cases, cause great expense, loss, and inconvenience; and to insert a condition in the charter that the company will not violate an Act of Assembly would be superfluous, for the law already defines the duty."[3]

The courts will not refuse to charter a cemetery company upon the mere allegation of protestants that the company purposes to violate the Act of June 24, 1895, P. L. 244, which provides that it shall be unlawful to use for the burial of the dead any land the drainage from which passes into any stream furnishing the whole or any portion of the water supply of any city, except beyond the distance of one mile from such city.[4]

Power of Burial Companies not Organized for Profit.

721. Any cemetery company which is now, or may hereafter be incorporated in this State, whose places of burial are not used for the purposes of corporate profit, may take and hold any grant, donation, or bequest of property upon trust to apply the same, or the income thereof, under the direction of the board of managers, for the embellishment of the said cemetery, or for the erection, repair, preservation, or renewal of any tomb, monument, or gravestone, fence, railing, or other erection, or for the planting and cultivation of trees, shrubs, flowers, or plants, in or around any cemetery lot, or for improving the said premises in any other manner or form consistent with the design and purpose of the act of incorporation, according to the terms of such grant, donation, or bequest.[5]

[3] Highland Cemetery Co., 16 Pa. C. C. R. 533 (1895).

[4] Highland Cemetery Co., 16 Pa. C. C. R. 533 (1895). WEAND, J., said: "In this case, therefore, we are compelled to grant the charter; and if the location hereafter selected is such as to make it appear to be in violation of the cited act, an injunction would be the proper remedy. It is not to be assumed that a corporation intends to do an illegal act; nor can we assume that its directors, as practical business men, would purchase land for a purpose that may hereafter be declared unlawful."

[5] Act of May 14, 1874, Sec. 1, P. L. 165.

The following acts relate to the protection and regulation of cemeteries and burial grounds: April 5, 1849, Sec. 1, P. L. 397; April 10, 1852, Sec. 5, P. L. 655; March 31, 1857, P. L. 144; March 31, 1860, Sec. 47, P. L.

Grants, Etc., of Moneys to be Invested.

722. All grants, donations, or bequests of money, which shall be made in accordance with the provisions of the foregoing section, the annual income of which only is directed by the terms of such grant, donation, or bequest, to be applied to any of the purposes set forth in said section, shall be invested by said board of managers, either in ground rents, mortgages upon otherwise unincumbered real estate, or the stocks or loans of this Commonwealth, or of the United States; and the said managers shall not be responsible for their conduct of such trust, except for good faith and such reasonable diligence as may be required of mere gratuitous agents: Provided, that the said managers shall in no case be obliged to make any separate investment of any sum so given, and that the average income derived from all funds of the like nature entrusted to the corporation shall be divided and apportioned annually to the credit of said lot or parcel of lots entitled thereto, and the same be expended in accordance with the direction or intention of the donor or grantor.[6]

Purchase of New Grounds.

723. Whenever any incorporated or unincorporated church, cemetery, or burial association, owns ground located wholly or in part in any city, township, or borough in this Commonwealth, and by reason of the growth thereof, and the consequent increasing number of interments, as well as for sanitary purposes, it is deemed necessary or desirable in the opinion of the said church, cemetery, or burial association to change the location thereof, or if by reason of the opening of streets, roads, or public passages around or through the same, a portion of their property has become angular and partially surrounded by improvements, making it necessary or advisa-

382; April 9, 1873, Sec. 1, P. L. 67; May 19, 1874, P. L. 208; May 13, 1876, Sec. 2, P. L. 159; April 18, 1877, P. L. 54; May 12, 1887, P. L. 96; June 16, 1891, P. L. 310.

In Philadelphia *v.* West Minster Cemetery Co., 162 Pa. 105 (1894), the Supreme Court declared unconstitutional the Act of June 8, 1891, which provided that it should be unlawful to establish a cemetery within one mile from any city of the first class, the drainage from which emptied into any stream from which any portion of the water supply for such city was obtained.

[6] Act of May 14, 1874, Sec. 2, P. L. 165.

ble to circumscribe the area and remove the dead to other parts thereof, or if by reason of the proximity of adjacent property, the further interment of the dead may, in the interest of public health, be prohibited in any part or parts of the grounds belonging to any church, cemetery, or burial association aforesaid, it shall be lawful for such incorporated or unincorporated church, cemetery, or burial association, and they are hereby authorized and empowered to purchase new and more suitable ground in the vicinity of such extent and area as they shall deem expedient, for the burial of the dead, and to purchase from the holders of lots in their own grounds the said lots, whether interments have been made in them or not, and to provide for the reinterment of bodies that may be buried in any of the lots so purchased by them. And the board of managers, trustees, or other officials in whom is vested the management of the affairs of such church, cemetery, or burial association are also hereby authorized and empowered to contract and agree with the owners of the lots in which interments have been made, to remove from the said lots the dead to such new locations, or other part of the ground appropriated or selected for their interment, upon such terms as may or can be mutually agreed upon. And in case any bodies have been interred in single graves, and the relatives of the deceased or the holders of the lots in which the interments are made cannot, after diligent search by the said board of managers, trustees, or other officials, be found, such bodies may be removed by the aforesaid managing officials to other places of interment in the grounds of the said church, cemetery, or burial association in which the bodies are interred, if the expense of such removals, inclosures, and improvements be borne by the said church, cemetery, or burial association; and upon the said removals being made, the ground from which the bodies so removed shall revert to and become the property of the church, cemetery, or burial association making such removal, and to be taken and considered as if the same had never been sold by the said church, cemtery, or burial association for the purpose of interment, or other purpose whatsover. And in case the holders of lots in which no interments have been made cannot, after diligent search by the managing officials above mentioned, be found, then the said managing officials may,

in their discretion, assign to the said owners other parts of their grounds, equal in value to the said lots the owners of which cannot be found, or the said managing officials may set apart, or hold in trust for the owners of said lots who cannot be found, a sum not less than the original price paid for said lots by the said owners, and shall hold and securely keep the said sum so set apart for the benefit of said owners, to be paid to them whenever they shall call for the same, and thereupon, as soon as lots equal in value have been set apart or marked on the books of the said church, cemetery, or burial association, as having been assigned to the said owners who cannot be found, or as soon as the said managing officials shall set apart the sum above mentioned for the benefit of said owners, then, and in that case, the lots originally held by said owners shall revert to and become the property of the church, cemetery, or burial association in whose grounds the same are located, as if the same had never been sold for the purpose of interment or any other purpose whatsoever. And such incorporated or unincorporated church, cemetery, or burial association is hereby further authorized and empowered to sell and convey in fee simple, and unrestricted as to use, all such portions of their lands not used or conveyed by them for burial purposes, or which shall have been re-conveyed to them, or shall have reverted or become acquired by them, as hereinbefore authorized, and from which all bodies shall have been removed, and to make, grant, and deliver in the customary form, a deed or deeds for the same to the purchaser or purchasers, free, clear, and discharged of any use, trust, or limitation whatsoever.[7]

Cemetery Companies Authorized to Accept Gifts, Devises, or Trusts in Certain Cases.

724. It shall and may be lawful for any duly incorporated burial or cemetery company within this Commonwealth, and said companies are hereby authorized and empowered to accept from any person or persons, by the terms of any deed, will or otherwise, any gift, devise, or bequest in trust for the uses and purposes of keeping in good order and repair the family burial lots, monuments, vaults, tombs, graves, and lot improvements, as well as for the planting of flowers, trees,

[7] Act of June 7, 1895, P. L. 181, amending the Act of June 6, 1893, Sec. 1, P. L. 325.

or shrubbery, or general decoration with flowers, of any such lots or graves of such grantors or devisors. But this power and authority shall not extend to any other uses or purposes whatever: Provided, however, that such burial or cemetery company, upon receipt of any such gift, devise, or bequest, shall report the same to the Court of Common Pleas of the proper county, and obtain the approval of the court as to the investment of the same, when such gift, devise, or bequest requires a principal sum of money to be held in trust by such company.[8]

Proper Officers of Church Associations, When Authorized by Court, may Abandon Burial Grounds.

725. The trustees, treasurer, or other proper officers of any church, congregation, presbytery, or other church organization, owning real estate used as a burying ground, may, whenever so desired by a majority vote of such church, congregation, or church organization, owner or owners as aforesaid, apply by petition to the Court of Common Pleas of the county wherein such real estate may be located, for leave to abandon such burying grounds, remove and reinter the bodies of deceased persons therein buried, and to sell such real estate in fee, clear of all restriction. Upon presentation of such petition, the court shall make such order relating to publication and notice to parties in interest as may seem meet and proper, and, after final hearing of all parties in interest, may make such decree relating to the abandonment of such grounds for burial purposes, the removal of bodies therefrom, and the sale thereof, as may be just and equitable; and when no person in interest can be found, said bodies to be removed and separately reinterred in some suitable burying ground, and each grave to be properly marked by head stone, et cetera (provided such grave was so marked before removal), by the trustees, treasurer, or other proper officer or officers of the church, congregation, presbytery, or other church organization owning the real estate so used as a burying ground: Provided, that no such petition shall be granted except upon condition set forth in the decree requiring the petitioners to purchase the rights of all lot holders in such burying grounds, and to secure the consent in writing of the near relatives of decedents, whenever such relatives

[8] Act of May 16, 1891, Sec. 1, P. L. 88.

shall appear as parties to such propceedings: And provided further, that any party in interest may appeal from the decree of such court within thirty days.[9]

Courts may Authorize Private Sale of Real Estate to be Made to Cemetery Companies.

726. Wherever the several courts of this Commonwealth are authorized by existing laws to decree the sale and conveyance of real estate, and it appears to the court of the proper county, on application, that such real estate is held by trustees of religious societies, congregations, or church organization which are desirous of selling and conveying a portion of said real estate to an association or corporation, for the exclusive purpose of a cemetery or place of sepulchre for the dead, it shall be lawful for said court to order and decree a private sale of said real estate, at such price and upon such terms and conditions as shall be agreed upon by said parties, notice of said application to be given to all parties interested as the court shall direct; the sale to be approved by the court and the deed acknowledged as required by existing laws.[10]

Grounds Used for Perpetual Burial Free from Taxation.

727. Wherever any lot or lots, or the right of sepulture therein, shall be granted to any person or family by any incorporated cemetery company, or church, or religious congregation, within any common inclosure made by such company, church, or congregation, as and for the purpose of the perpetual burial of the dead, every and all lots so disposed of or used for burial shall hereafter be free and exempt from all taxation, so long as the same shall be used or held only for the purpose of sepulture.[11]

Dispositions in Perpetuity for Care of Burial Places Legalized.

728. No disposition of property hereafter made for the maintenance or care of any cemetery, churchyard, or other place for the burial of the dead, or of any portion thereof, or grave therein, or monuments or other erections on or about the same, shall fail by reason of such disposition having been made in perpetuity, but said disposition shall be held to be made for a charitable use.[12]

[9] Act of May 23, 1887, Sec. 1, P. L. 168.
[10] Act of March 24, 1877, Sec. 1, P. L. 39.
[11] Act of April 5, 1859, Sec. 1, P. L. 363.
[12] Act of May 26, 1891, Sec. 1, P. L. 119.

Transfer of Cemeteries to Boroughs.

729. Upon petition of the managers and officers of any incorporated cemetery company, and a majority of the taxables of the borough to which it is proposed to transfer such cemetery, the said court may authorize the transfer of any cemetery to the borough authorities of any borough in which such cemetery may be located or adjacent thereto; and such transfer shall be made without cost to such borough; and upon such transfer being made, such borough authorities shall hold and exercise the power and privilege of such incorporated company, and may purchase lands within or beyond such borough limits, not to exceed thirty acres, for the extension of such cemetery, if the same be deemed necessary, and may raise the means by sale of lots or otherwise, but in no event by taxation, to pay for the same, and perform such other duties as may be deemed necessary in the premises; they may lay out the grounds so purchased, and change or alter the original plot of such cemetery, and may dispose of such grounds in the same manner and for the same purposes as such incorporated company did or could have done; and a deed made by the burgess of such borough shall be of the same validity as the deed of such incorporated company; and the said burgess of any such borough is hereby authorized to make deeds to those who heretofore purchased lots for burial, but have not as yet been furnished with deeds by said cemetery corporations; in changing or altering the plot of any such cemetery the dead bodies may be removed and reinterred in a suitable place without cost to surviving friends.[13]

[13] Act of May 13, 1876, P. L. 159, Sec. 3.

CHAPTER LI.

CHARITABLE CORPORATIONS.

730. May Purchase Real Estate in Certain Cases.
731. Jurisdiction of Courts.
732. When Majority of Laymen to Control Property.

May Purchase Real Estate in Certain Cases.

730. In all cases of hospitals, schools, charitable, literary, and religious institutions of all kinds, prohibited by their respective charters or by law from holding real estate, or limited as to the amount thereof, the said prohibition or limitation shall not be taken to extend to purchases made by corporations such as aforesaid, at sheriffs', masters', or marshals' sales of real estate, on which the party purchasing may hold a mortgage, judgment, or ground rent, when such purchases are made to protect their respective interests; and that deeds made to them respectively as such purchasers, by sheriffs, masters, or marshals making the sales, shall convey to the said purchasers respectively a good and indefeasible title to any and all real estate so purchased, as if no prohibition or limitation as to the purchase of real estate existed in their respective charters or in the law: Provided, that all real estate bought by any corporations such as aforesaid under the provisions of this act, in excess of the quantity they are allowed by law or their respective charters to hold, shall be sold by said corporations either on ground rent or otherwise within ten years from the purchase so made as aforesaid.[1]

Jurisdiction of Courts.

731. The Orphans' Court has exclusive jurisdiction of the

[1] Act of May 13, 1879, Sec. 1, P. L. 60.

control and direction of the disposition of property belonging to incorporated charities. Thus the decree of the Orphans' Court on the application of trustees of an incorporated charity for leave to sell real estate, is conclusive upon the Court of Common Pleas.[2]

When Majority of Laymen to Control Property.

732. The Act of April 26, 1855, P. L. 330, compelling all charitable corporations composed in part of laymen to allow all matters of property to be controlled by a body of trustees or governors, the majority of whom shall be laymen, is not repealed by the General Corporation Act of April 29, 1874.[3]

While the Act of April 26, 1855, requires that charters for churches, etc., must contain an express provision as to the management of property by laymen, other charitable corporations are not required to express this provision in the charter; they, as well as associations not chartered, are subject to these provisions as laws of property; that is, no act of the corporation or association by which property is affected in title will be valid unless the corporate act is done by a body, the majority of whom are laymen; nor would an election of a body having the control of the property of the corporation, composed of a body of ecclesiastics, be valid, for that would enable the corporation to evade the statute.[4]

[2] Mercer Home *v.* Fisher, 10 Mont. Co. Law Rep. 147 (1894).

[3] Roman Catholic High School *v.* Harrison, 12 W. N. C. 32 (1882). See Section *22, supra*, page 51.

[4] Roman Catholic High School *v.* Harrison, 12 W. N. C. 33 (1882).

CHAPTER LII.

CO-OPERATIVE ASSOCIATIONS.

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755. Proceedings for Dissolution Prior to Expiration of Term Specified in Articles of Association.

Incorporation of Co-Operative Associations by any Five Persons.

733. Co-operative associations, productive and distributive, may be incorporated under this act, upon compliance

with its requirements, by any five or more farmers, mechanics, laborers, or other persons, who shall have associated themselves together by written articles of association, such as are hereinafter described, for the purpose of carrying on any agricultural, horticultural, mining, quarrying, building, mechanical, manufacturing, or commercial, or for the purpose of manufacturing, cultivating, raising, trading, or dealing in all kinds of goods, wares, merchandise, chattels, grains, vegetables, roots, fruits, and other produce, or animals for sale, food, or other purposes, or for the purpose of buying, selling, holding, leasing, or improving lands, tenements, or buildings; and that such persons, so associating, may adopt any corporate name, indicating their co-operative character, and which has not been previously adopted by any other corporation formed under this act: Provided, that the two last words of such name shall be "co-operative association," and that it shall not be lawful to use, in such name, either the words "society" or "company," and that any violation of this proviso by any corporation, formed under this act, shall render each member thereof personally liable for all its debts.[1]

Filing of Articles.

734. Before any association formed under this act shall commence its business, its articles of association shall be filed and recorded in the office of the secretary of state of this State, and two copies of the said articles shall be made, which the said secretary of state shall certify by his official signature and the seal of this State as being correct copies of said articles so filed and recorded; one of said certified copies shall be filed and recorded in the office of the recorder of deeds of the county in which the principal office of the association shall be located, and the said recorder of deeds shall certify by his official signature and the seal of his office that the said certified copy of said articles has been filed and recorded in his office, and the other certified copy of said articles shall be held by the association named therein; and the said articles or copies thereof duly certified by either of the aforesaid officers may be used as evidence in all courts and places of the incorporation of as well as for or against such association; and the said secretary of state and the said recorder of deeds shall each be paid for said filing, recording, and certifying at

[1] Act of June 7, 1887, Sec. 1, P. L. 365.

the rate of ten cents for each one hundred words contained in said articles; and after such articles of association shall have been made, filed, and recorded, as herein required, the persons signing the same, and such other persons, partnership or corporation, who shall, from time to time, own and possess any share or shares in the stock capital of such association, and their several successors and assigns, shall be deemed and taken to be a body corporate and politic, by the name and for the purposes mentioned in such articles of association.[2]

Where the articles of a co-operative association organized under the Act of June 7, 1887, contain the term of the existence of the company as required by the second section of the act, but through a mistake in the office of the secretary of state the term is omitted in the copy sent to the county recorder, the individual members of the company will not be personally liable for its debts.

The failure of such an association to publish on its letterheads the notice in regard to credit required by the eighth section of the act, does not make the members individually liable for the debts of the association; nor will they be liable because the association sells on credits, or in good faith confesses judgment to one of its members for an honest debt.[3]

Articles to be Subscribed by at Least Five Persons and Acknowledged.

735. The articles of association shall be signed by the persons originally associating themselves together, and shall be acknowledged by at least five of them, before a notary public, and shall state distinctly:

I. The name by which such association shall be known.

II. The place in this State where its principal office is to be located.

III. The purpose or object for which it is formed.

IV. Whether its stock capital is fixed, and if so, what amount, or whether such capital is to be of an amount varying, from time to time, as the business may require.

V. The amount of each share of permanent stock and ordi-

[2] Act of June 7, 1887, Sec. 2, P. L. 365.

[3] Bendall, Rankin & Co. *v.* Jackson *et al.*, 11 Pa. C. C. R. 183 (1892).

nary stock of such capital, and how such shares may be paid for.

VI. The amount of capital that will be actually paid in before commencing business.

VII. The terms on which persons may become members.

VIII. On what days in January, April, July, and October regular or quarterly meetings of the members are to be held.

IX. Such other matters, not repugnant to this act, as may be deemed proper and necessary.

X. The term of its existence, not to exceed thirty years, and,

XI. The names of the first associates, their respective residences, and the number and class of shares held by each of them.[4]

Capital Stock.

736. The stock capital of any such association shall consist of the amounts standing to the credit of members on account of the shares allotted to them, certificates for which shall be issued, from time to time, as such shares may have become fully paid up; and there may be two classes of shares, one of which classes shall be styled and known as "permanent stock," which shall not be withdrawable, but may be transferred, subject to the by-laws of such association, and each member thereof shall take and hold at least one share of said permanent stock; and the other class of shares may be styled and known as "ordinary stock," which may be repaid, transferred, or withdrawn, in accordance with the by-laws of such association; and the shares of either class may be of amounts not less than five nor more than twenty-five dollars each, and may be paid for in one sum, or by periodical instalments, or by occasional subscriptions, or by the interest thereon, or by profit dividends.[5]

Monthly Statement.

737. It shall be the duty of any such association to exhibit in some conspicuous place, in its principal office, not later than three o'clock, post meridian, on the first business day of every month, and to continue the same in such place until the next exhibit shall be thus made, a statement showing

[4] Act of June 7, 1887, Sec. 3, P. L. 365.
[5] Act of June 7, 1887, Sec. 4, P. L. 365.

correctly and distinctly the amount of such invested stock capital, and what proportion such stock capital bears to such loans or deposits, such statement to be made up to the close of the next preceding month, and to be signed by the president and treasurer, or by any two of the directors, and to be attested by the secretary and auditors of such association, and if any of such officers as aforesaid shall willfully make or knowingly consent to any false statement in such exhibit, he shall, by so doing, be deemed to have committed a misdemeanor, and shall, upon conviction thereof, be punished as provided in Section 13 of this act: Provided, any member or other person having an interest in the funds of such association, or any person legally authorized to assess property for taxes, may inspect its books and accounts during the official business hours, but no such member, person or assessor, unless he be an officer of such association, or be specially authorized by a resolution thereof, shall have the right to inspect the share or other account of any other member or person without his written consent.[6]

Limitation as to Amount of Stock to be Held by any One Person.

738. The amount of stock capital of such association to be taken, held, or claimed at any one time by any person or persons, jointly or by partnerships, or by corporations, shall not exceed $1,000, except consent therefor be voted by the members, at any regular quarterly meeting thereof, nor shall any member, upon any subject at any meeting, be entitled to more than one vote, which shall be given in person, and not by proxy, and any stock capital held by persons jointly or by partnerships, or by corporations, shall be voted upon as if held by one person only respectively, and subject to the by-laws of such association.[7]

Minors Authorized to Take and Hold Shares.

739. It shall be lawful, if the by-laws so provide, for any minor to take and hold shares in or to make loans or deposits of money to or with any such association, and for such association to pay to any minor any moneys that may be due to him in respect of any such shares, loans, or deposits standing in his name, and his receipt therefor shall be in all re-

[6] Act of June 7, 1887, Sec. 5, P. L. 365.
[7] Act of June 7, 1887, Sec. 6. P. L. 365.

spects valid in law, but such minor shall not be eligible to hold any office in such association, though he may, subject to its by-laws, vote at any meeting of its members.[8]

Business to be Conducted on Cash System.

740. Any such association may buy from, sell to, and trade or deal with any of its members, or other persons, partnerships or corporations, but all transactions shall be for cash, and no credit shall either be given or taken, except that such association may contract for and pay the wages and salaries of its employees once in each week in cash, and except that such association may sell real estate, improved or otherwise, on such terms that at least one-fourth of the agreed price shall be paid in cash at the time of sale, and that not more than three-fourths of the agreed price, together with interest on the amount of principal, interest, and charges owing, from time to time, at a rate not exceeding 6 per centum per annum, may be secured by bond and mortgage, or by promissory notes and mortgages, and be made payable by fixed and equal periodical instalments: Provided, however, that such association may take or grant leases of real estate for such terms as may be agreed upon, but no such lease for any time exceeding one year, or creating a credit or liability for any sum exceeding three hundred dollars, shall be lawful or valid until the same shall be approved by a vote of the members at any regular quarterly meeting thereof: And provided further, that any credit given to any such association in violation of the provisions of this act shall cause a forfeiture of any credit thus illegally given, and that a notice to such effect shall be published, by such association, on its letter and bill heads, advertisements, and other publications.[9]

Individual Liability of Members.

741. The members shall be severally and jointly liable for all debts for labor or other services of any kind performed for such association, and for any other debts lawfully incurred under the provisions of this act each of the members shall be liable to the amount of his unpaid stock capital and no more, but no suit shall be brought, or any execution issued against any member individually until a judgment be first

[8] Act of June 7, 1887, Sec. 7, P. L. 365.
[9] Act of June 7, 1887, Sec. 8, P. L. 365.

obtained for such labor, services, or any other lawful debts against such association, and execution thereon be returned unsatisfied in whole or in part; and in case any member shall be compelled to pay any such judgment, or any part thereof, beyond his *pro rata* liability therefor, he shall have the right to call upon all the members to pay their *pro rata* share of the same, or up to their *pro rata* liability therefor, and may sue them jointly or severally, or any number of them, and recover in such action the ratable amount due from the member or members so sued: And it is hereby provided, that stock capital to the extent of twenty-five dollars belonging to any member in such association, who is a householder and has a family, shall not be subject to attachment or execution, or liable in garnishment for his individual debts.[10]

Corporate Powers.

742. Any such association may carry on its business or any part thereof at any one or more places within this State; and may take, hold, lease, and convey such personal and mixed estate as may be necessary for the purposes of its organization; and may sue and be [sued] in its corporate name, and may submit any matter in dispute to arbitration; and shall have a common seal, which shall not be altered or imitated, and shall bear the corporate name of, together with such device or motto as may be adopted by such association, and such seal shall be impressed upon the articles of association; and any such association may, for all and every and any of the purposes of its organization, and for every and any other purpose incidental thereto, or in this act mentioned or referred to, lay out and use its capital or other moneys and property for the time being, or any part thereof, with power to do, authorize, and exercise all acts and powers whatsoever in the opinion of the directors of such association requisite or expedient to be done or exercised in relation thereto.[11]

Investment of Capital Stock in Other Associations Authorized and Regulated.

743. Any such association may, by a majority vote of its members at any meeting specially convened therefor, authorize the directors thereof to invest, in the name of such asso-

[10] Act of June 7, 1887, Sec. 9, P. L. 365.
[11] Act of June 7, 1887, Sec. 10, P. L. 365.

ciation, such an amount of its stock capital or reserve fund, and on such terms as such meetings shall determine, in the stock capital [of] any other duly incorporated co-operative association in this State, or in any other State or country, and any such association may, by a like vote, permit an investment in its stock capital by any other co-operative association duly incorporated in this State, or in any other State or country: Provided, that the original laws of such associations permit or authorize such investments.[12]

Business Transactions of First Meeting.

744. The first meeting of any such association may be called by a notice signed by any two of the associates, who signed its articles of association, setting forth the time, place, and objects of such meeting; such notice to be mailed to the address of each associate at least four clear days prior to such meeting, and a majority of such associates at such meeting shall be competent to make all such by-laws as they may deem necessary for the proper management of the business, property, and affairs of such association, so that such by-laws are not repugnant to or inconsistent with the provisions of this act, or of any law of this State and of the United States, to elect the first president and secretary, both of whom shall be directors *ex officio*, treasurer, and either six, eight or ten directors, and two auditors, all of whom shall be members of such association, and hold their offices until their successors shall have been elected in accordance with Section 15 of this act, and to transact any other business necessary for the organization of such association, and appropriate to such meeting; and the secretary of such meeting shall make full and correct minutes of its proceedings upon the books of such association, and the same, being signed by its chairman, shall be deemed and taken to be *prima facie* evidence of the action of such meeting.[13]

Regular Quarterly Meetings to be Held, and Dates Fixed by Directors.

745. Every such association shall hold regular quarterly meetings of its members in the months of January, April, July, and October, at such place as the directors shall de-

[12] Act of June 7, 1887, Sec. 11, P. L. 365.
[13] Act of June 7, 1887, Sec. 12, P. L. 365.

termine and publish, for the purpose of considering and determining upon any matter, not requiring special notice, relating to the business of such association, and at each quarterly meeting the directors shall present a full and complete report, signed by the president, of such association's transactions during the last preceding quarter, accompanied by such information and suggestions in relation to the affairs of such association, and to the future management thereof, as may be for the best interests of the association; and they shall also present, at each quarterly meeting, an account of all cash receipts and payments, and of the losses and gains of such association for the last preceding quarter, and also a general statement or balance sheet of such association's funds and effects, liabilities and assets, as at the close of the last business day of said quarter, and such account and general statement shall be signed by the president and treasurer, and be attested by the secretaries and auditors of such association; and a copy of such report, account, and general statement shall be kept posted up, for three months at least, in a conspicuous place in the principal office and other places of business of such association; and any director, president, treasurer, secretary, auditor, or other officer, who shall include or knowingly consent to any false statement in such report, account, or general statement, or in any other statement required to be made by this act, or by any vote of the members at any meeting thereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof be punished by a fine of not more than one thousand dollars, or by imprisonment in the State prison for not more than one year, or by both such fine and imprisonment, in the discretion of the court.[14]

Election of Officers.

746. After the first election of the directors, officers, and auditors, as provided in Section 12 of this act, the president, secretary, treasurer, and one-half of the directors and auditors shall be elected at the quarterly meeting in January, and the other half of the directors and auditors shall be elected at the quarterly meeting in July, and shall hold the several offices for one year, or until their successors are elected, and the directors shall decide by lot or otherwise, as they

[14] Act of June 7, 1887, Sec. 13, P. L. 365.

may deem best, who shall constitute the first half of the directors and auditors to retire at the first election that may be made at a quarterly meeting aforesaid. The by-laws of such association shall provide how nominations shall be made and votes be taken for president, secretary, treasurer, directors, and auditors, and also their eligibility and qualifications for their several duties, responsibilities, and remuneration, and for their removal from office for good and sufficient cause: Provided, that each of the official acts of the board of directors shall be by a majority vote of all the directors elect, and shall be recorded, with the yeas and nays thereon, in the minute book of such association.[15]

Profits to be Ascertained and Declared Quarterly.

747. The profits shall be ascertained and declared on all business carried on in each department or branch, or by, or for, or on account of any such association for each quarter year ending with the months of March, June, September, and December, and the profits realized shall be applied as follows:

I. In reduction of the value of the fixed stock and plant of such association at the annual rate of 10 per centum, or more, on fixtures, machinery, tools, et cetera, and of $2\frac{1}{2}$ per centum, or more, on warehouses, stores, or other buildings, as the directors shall determine and order.

II. In the reduction of the preliminary expenses, if any, incurred in the formation of such association and remaining unwritten off in its books at such rate, being not less than 5 per centum per annum, as the directors shall determine and order.

III. In providing for or payment of interest, at the annual rate of 6 per centum on permanent stock, and 5 per centum on ordinary stock and the reserve fund: Provided, however, that such interest shall be credited to each member, but shall not be paid until his stock is fully paid up.

IV. In forming, by applying such sum or percentage of the net or remaining profits after providing for the preceding charges as the directors shall determine and order, a reserve fund, to which also all fines and forfeitures shall be carried, applicable as follows: First, to the equalization of dividend; second, to meet any other contingency affecting the business

[15] Act of June 7, 1887, Sec. 14, P. L. 365.

of such association; and, third, to any other purpose as may be voted by the members on the recommendation of the directors.

V. In forming and maintaining a propaganda and social fund, to which shall be credited such sum, being not less than 2½ per centum of the net profits, as the directors shall determine and order.

VI. And the remainder of the net profits shall be divided as follows: On the wages and salaries of employees the same rate, and on the purchases by non-members one-half of the rate that may be allotted on the purchases by members, such wages or salaries to be the amount earned, and such purchases to be the amount actually paid for in cash during the period to which such division relates: Provided, that no profit dividends shall be allowed on the purchases of such articles as the directors may have given previous notice of their intention to exclude from participation in profits: And provided further, that all such profit dividends shall be credited to such members, non-members, and employees, respectively, to accumulate and be applied in or toward the payment of shares of permanent stock or ordinary stock, as the directors may from time to time determine and order the issue of paid-up certificates therefor, until the amount of stock capital held by such members individually reaches the limit allowed by this act; after which the profit dividends may be paid to such members as shall be provided for in the by-laws of such association.[16]

Establishment of Regular Business Office.

748. Every such association shall have a regular business office to which all communications and notices shall be addressed; and service of any legal process on any such association shall be made by leaving at such office a true copy of such process with any director, officer, clerk, or agent of such association; and in case such office shall be kept closed against such service, then service of such process may be made on such association by giving a true copy thereof to any of its directors or officers, if found in the county wherein such office is located; and if, on a return of such a process, it appears that such office is kept closed, or that such directors or officers could not be found within the said county,

[16] Act of June 7, 1887, Sec. 15, P. L. 365.

then such process may be served on such association by serving a true copy thereof on any of its directors or officers wherever found in this State; and failing in that, and on a return made to such effect, the court may order such publication, as it may deem requisite to be made in the premises, for at least one month in at least one newspaper published at or as near as may be to the place where the principal office of such association is located, and proof of such publication shall be held to be due service on such association.[17]

Employees Having Charge of Financial Affairs to Give Bond.

749. Every person appointed to any position in any association requiring the receipt, payment, management, or use of money, belonging to such association, shall, before entering upon the discharge of his duties, become bound, with two or more good and sufficient sureties, in such sum and form as the directors shall require and approve; and the directors may also require from any other employees of such association bonds, with good and sufficient sureties, for the faithful discharge of their duties.[18]

Collection of Fines for Non-Observance of By-Laws, Rules, Etc.

750. Any such association may charge any of its members, employees, or other persons doing business with it, by way of fine, for any breach or non-observance of its by-laws, or any of its business rules and regulations, such reasonable sum, not more than five dollars for each offense, as the directors may determine and order, and all such fines shall be due and payable forthwith, and if not paid, the same may be deducted from any moneys due, credited or accruing to the parties so offending.[19]

Embezzlement of Money or Property of Associations Deemed Embezzlement and Punished Accordingly.

751. If any director, officer, clerk, agent, or other person in the employment of any such association, shall embezzle or fraudulently dispose of or convert to his own use, or shall take or secrete, with intent to embezzle and convert to his own use, any money or other property of such association,

[17] Act of June 7, 1887, Sec. 16, P. L. 365.
[18] Act of June 7, 1887, Sec. 17, P. L. 365.
[19] Act of June 7, 1887, Sec. 18, P. L. 365.

or of any of its dealers or customers, which shall have come into his possession, or shall be under his charge by virtue of such office or employment, or otherwise, he shall be deemed, by so doing, to have committed the crime of embezzlement, and shall, upon conviction thereof, be punished as the law directs.[20]

Articles of Association and By-Laws may be Altered or Amended.

752. Any such association may alter or amend its articles of association, and may alter or rescind any by-law, or make any additional by-law, with the consent of a majority of its members present at a special meeting convened for such purpose, but the notice calling such meeting shall set forth fully and clearly the proposed alteration, amendment, rescission, or addition; and any alteration or amendment of the articles of association shall be filed, recorded, and certified in the same manner as the original articles of association.[21]

Articles and By-Laws to be Recorded in a Book, to be Kept Open for Inspection.

753. The articles of association and by-laws, and any amendments thereto or alterations therein, respectively, of any such association, shall be recorded in a book to be kept for that purpose, and such book shall be open during business hours at the principal office of such association for the inspection of its members and other persons having an interest in its funds, and such articles of association, by-laws, and amendments thereto and alterations therein, respectively, so recorded, shall be binding on such association, its directors, officers, members, and employees, and on all other persons having an interest in the funds of or dealing with such association, and all persons claiming on account of any or either of them, or under such articles of association, by-laws, or amendments thereto or alterations therein, respectively, to the same extent as if each and every such person had subscribed his name and affixed his seal thereto, and there were in such articles of association, by-laws, or amendments thereto or alterations therein, respectively, contained a covenant on the part of himself, his heirs, executors, administrators, and assigns to conform to such articles of association,

[20] Act of June 7, 1887, Sec. 19, P. L. 365.
[21] Act of June 7, 1887, Sec. 20, P. L. 365.

by-laws, and amendments thereto or alterations therein, respectively, subject to the provisions of this act, all of whom shall be deemed and taken to have full notice thereof by such record as aforesaid, and the entry of such articles of association, by-laws, and amendments thereto or alterations therein, respectively, in the books of such association, or a true copy of the same, examined with the original and proved to be a true copy, shall be received as evidence thereof in all courts and places.[22]

Benefits Bestowed on Associations by Compliance With Provisions of This Act.

754. Any co-operative association now in existence in this State, whether incorporated or unincorporated, shall be entitled to all the benefits of this act by complying with its provisions, and may, by a vote of the majority of the members of such co-operative association to be taken according to its existing articles of association or by-laws, determine to avail itself of the provisions of this act, and to take and assume corporate name and powers thereunder, and may, by a like vote, transfer to such association, so formed under this act, all its property, real, personal, and mixed, and thereupon such association, to which said property is so transferred, shall take the same in the same manner, to the same extent and with the like effect as the same was previously owned and held by the association so transferring the same, and may, in its corporate name, sue for and collect all dues and demands, subscriptions, and other benefits belonging to such original incorporated or unincorporated association: Provided, however, that such association so taking such property as aforesaid, shall take the same subject to all liens and trusts, both legal and equitable, to which the same was subject before such transfer, and shall also be liable for all debts and obligations of such previous association, and shall pay the same to the full extent of the value of such property at the same time of so taking the same.[23]

Proceedings for Dissolution Prior to Expiration of Term Specified in Articles of Association.

755. Any such association desiring for any reason to be dissolved prior to the expiration of the term of years specified

[22] Act of June 7, 1887, Sec. 21, P. L. 365.
[23] Act of June 7, 1887, Sec. 22, P. L. 365.

in its articles of association may, by a resolution passed at a special meeting therefor, by a majority vote of all the members of such association, authorize its directors, or a special committee of members, to prepare or have prepared a full and true exhibit of the affairs, property, and condition of such association, including an itemized statement of all its assets and liabilities, and also to report whether, in the opinion of such directors or committee, it would be best to continue or close up any or all of the business of such association, and, in the latter case, to recommend such methods and means as in their judgment would be best adapted for closing up such business; such exhibit, report, and recommendation to be printed, and a copy thereof to be mailed, postage prepaid, to the last recorded address of every member of such association, together with a notice from the president of such directors, or chairman of such committee as the case may be, convening a special meeting of the members to be held at such time, being not less than ten, nor more than fifteen days from the date of mailing such notice, as such directors or committee shall determine and order for the purpose of considering and acting on such exhibit, report, and recommendation, as to such special meeting shall seem best: Provided, that all votes taken on such recommendation at such special meeting shall be by ballot, and that it shall require three-fourths of all the ballots cast to carry any motion for the winding-up and dissolution of such association: Provided also, that such president or chairman as aforesaid shall mail to every member of such association, along with the notice for the last mentioned special meeting, a printed form of ballot for the use of such members as may be unable to attend at such special meeting, on which shall be printed two questions as near as may be in the following words: Are you in favor of the winding up and dissolution of the association? Answer yes or no. Are you in favor of the plan as recommended for those purposes? Answer yes or no. And such answers shall be signed by the members so answering, and such ballots may be addressed and mailed, postage prepaid, or be personally delivered to such president or chairman as aforesaid at the principal office of such association; and all such ballots so received prior to or at the time appointed for such special meeting shall be opened and counted by the scrutineers or tellers appointed by such special meeting along

with the ballots cast on the same or like questions by the members present at such special meeting: And provided further, that in the event of a resolution being passed, as aforesaid, by such special meeting, for the winding up and dissolution of such association, a copy of such resolution, duly certified by the official signatures of the president and secretary, and sealed with the common seal of such association, shall be given to, and shall contain full instructions and authority for, the parties to be named therein to assume and discharge the duties entrusted to them by such resolution; and upon the completion of such duties by said parties, they shall make a certificate, signed and sworn to by them before a notary public, upon such certified copy of the aforesaid resolution, that they have truly and faithfully discharged all the duties entrusted to them thereby, and that they have realized all the assets and settled all the liabilities of such association in accordance with the instructions and authority given to them by such resolution; and such certificate and certified copy of such resolution shall be filed by such parties in the offices of the secretary of state of this State and of the recorder of deeds of the county wherein the principal office of such association was located, and such certificate and certified copy of resolutions shall be recorded by the said secretary and the recorder of deeds in like manner as the articles of association of such association were recorded.[24]

[24] Act of June 7, 1887, Sec. 23, P. L. 365.

CHAPTER LIII.

CO-OPERATIVE BANKING ASSOCIATIONS.

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Conditions of Incorporation.

756. Co-operative banking associations may be incorporated under this act upon compliance with the requirements of Section 11, Article XVI, State Constitution, when ten or more persons of lawful age, citizens of this Commonwealth, who shall have associated themselves together by written articles of association for the purpose of carrying on a co-operative banking business, where the profits derived from the business shall, after paying all legitimate expenses, be divided *pro rata* among the depositors and borrowers of the bank in proportion to their deposits or loans, to each class one-half of the net profits; and a dividend not to exceed 6 per centum per annum on original subscribed stock may be considered legitimate expenses.[1]

[1] Act of May 18, 1893, Sec. 1, P. L. 89.

Corporate Name—Filing Articles.

757. Such persons so associating may adopt any corporate name indicating their co-operative character, and which has not been previously adopted by any other corporation formed under this act: Provided, the last three words of such name shall be Co-operative Banking Association, and it shall not be lawful to use in such name either of the words "society" or "company," and that any violation of this proviso by any corporation formed under this act shall render each member thereof personally liable for all its debts.

Before any company formed under this act shall commence its business its articles of association shall be filed and recorded in the office of the secretary of the Commonwealth, and two copies of said articles shall be made, which the said secretary of the Commonwealth shall certify by his official signature and the seal of this Commonwealth as being correct copies of said articles so filed and recorded; one of said certified copies shall be filed and recorded in the office of the clerk of the county in which the office of the association shall be located, and the said clerk shall certify by his official signature and seal of his office that the said certified copy of said articles has been filed and recorded in his office, and the other certified copy of said articles shall be held by the association named therein, and the said articles, or copies thereof, duly certified by either of the aforesaid officers, may be used as evidence in all courts and places of the incorporation of as well as for or against such association, and the said secretary of the Commonwealth and the said county clerk shall be paid for said filing and recording and certifying at the rate of ten cents for each hundred words contained in said articles, and after such articles of association shall have been made, filed, and recorded as herein required, the person signing the same and such other persons, partnerships, or corporations, who shall, from time to time, own or possess any share in the stock capital of such association, and their several successors and assigns, shall be deemed and taken to be a body corporate, and by the name and for the purposes mentioned in such articles of association.[2]

Requisites of Articles of Association.

758. The articles of association shall be signed by the per-

[2] Act of May 18, 1893, Sec. 2, P. L. 89.

sons originally associating themselves together, and shall be acknowledged by at least five of them before a notary public, and shall state distinctly, (1) the name by which this association shall be known, (2) the place in this State where its principal office is to be located, (3) the purpose or object for which it is formed, (4) amount of its stock capital, (5) the amount of each share of stock of such capital, such shares not to exceed ten dollars per share, and how such share may be paid for, (6) the amount of capital that will be actually paid in before commencing business; also amount of preferred stock to be assigned to stockholders who may hereafter earn stock from custom dividends, (7) whether, and if so, to what extent, loans, or deposits of money are to be received for use in its business, (8) the terms upon which persons may become members, (9) on what days in January regular annual meetings of the members are to be held, (10) such other matters not repugnant to this act as may be deemed proper and necessary, (11) the term of its existence not to exceed twenty years, (12) and names of the first associates, their respective residences, and the number of shares held by each of them. No such association shall commence business until the financial standing, responsibility, and character of the original stockholders shall have been approved and certified by the superintendent of the banking department of the Commonwealth.[3]

Capital Stock.

759. The stock capital of any such association shall consist of the amounts standing to the credit of the members on account of the shares allotted to them, certificates of which shall be issued from time to time as shares shall be fully paid up or earned.[4]

List of Stockholders.

760. It shall be the duty of such company to exhibit in some conspicuous place in its principal office, at all times, a list of stockholders and the amount of stock held by each stockholder, the amount of stock subscribed or earned at the time of each last annual meeting; also the amount of pre-

[3] Act of May 18, 1893, Sec. 3, P. L. 90.
[4] Act of May 18, 1893, Sec. 4, P. L. 91.

ferred stock which shall not be a liability stock, only as it becomes assigned to individual stockholders.[5]

Minors May Hold Shares and Make Loans, but not Hold Office.

761. It shall be lawful, if the by-laws so provide, for any minor to take and hold shares in, or to make loans or deposits of money to or with any such corporation, and for such association to pay any minor any moneys that may be due to him in respect of any shares, loans, or deposits standing in his name, and his receipt therefor shall be in all respects valid in law, but such minor shall not be eligible to hold any office in such association, though he may be subject to its by-laws and vote at any meeting of its members.[6]

Restriction Upon Payment of Profits.

762. No profits shall be paid out to any stockholder until the total registered amount of stock shall be fully paid in cash, or earned from the net profits of the company.[7]

Depositors and Borrowers to Become Voting Members.

763. Depositors and borrowers to whom dividends are due shall not withdraw the same, but shall take full paid stock in lieu thereof, until the registered and preferred stock of the company becomes fully paid up, and as each share of stock becomes fully paid up this class of stockholders may become voting members, but each shareholder shall be entitled to but one vote on each share of stock.[8]

First Meeting—A Majority of Associates Competent to Transact Business.

764. The first meeting of any such association may be called by a notice signed by any two of the associates who signed its articles of association, setting forth the time and place and objects of such meeting, such notice to be mailed to the address of each associate at least four days clear prior to such meeting, and a majority of such associates at such meeting shall be competent to make all such by-laws as they may deem necessary for the proper management of the association, so that any such by-laws are not repugnant to or

[5] Act of May 18, 1893, Sec. 5, P. L. 91.
[6] Act of May 18, 1893, Sec. 8, P. L. 91.
[7] Act of May 18, 1893, Sec. 7, P. L. 91.
[8] Act of May 18, 1893, Sec. 9, P. L. 91.

inconsistent with the provisions of this act, or any law of the State or United States, and to elect such officers as are heretofore provided by this act; and such officers shall hold office until their successors shall have been elected and installed.[9]

Powers of Association with Regard to Real Estate, Suits, and Seal.

765. Any such association may take, hold, lease, and convey such real estate as may be necessary for the purpose of its organization, and may sue and be sued in its corporate name, and may submit any matter in dispute to arbitration, and shall have a common seal, which shall not be altered or imitated, and shall bear the corporate name of, together with such device or motto as may be adopted by, such association, and such seal shall be impressed upon the articles of association.[10]

Liability of Members.

766. The members shall be severally and jointly liable for all deposits, debts for labor, or service of any kind performed for such association, and for any other debts lawfully incurred under the provisions of this act; each of the members shall be liable to twice the amount of his subscribed or earned stock capital, and no more, but no suit shall be brought, or any execution issued against any member individually until a judgment be first obtained for such deposits, labor, services, or other lawful debts against such association, and execution thereon be returned unsatisfied, in whole or in part, and in case any member shall be compelled to pay any such judgment, or any part thereof beyond his *pro rata* liability therefor, he shall have the right to call upon all the members to pay their *pro rata* share of the same, or up to their *pro rata* liability therefor, and may sue them jointly, or severally, or any member of them, and recover in such action the ratable amount due from the member or members so sued.[11]

Officers and By-Laws—Directors—Loans not to Exceed Ten Per Cent. of Deposits.

767. The company shall be controlled by a board of six directors, who shall serve for three years, two of which shall

[9] Act of May 18, 1893, Sec. 13, P. L. 93.
[10] Act of May 18, 1893, Sec. 11, P. L. 92.
[11] Act of May 18, 1893, Sec. 10, P. L. 92.

be elected annually, and provision shall be made at the first election to elect two to serve one year, two to serve two years, and two for three years. Said directors shall elect a president and secretary from their number, and said directors shall have full control of all employees and business of the association, subject to by-laws, but no employee shall be a director. The by-laws shall provide rules and regulations for the loaning or discounting of the capital and deposits of the association, and the nature of its securities, and no loan shall be made to any individual, firm, or company, either singly or collectively, in excess of 10 per centum of the deposits of the association at the time of making such loan, and any violation of this provision will render the person or cashier, so making, liable upon his bond, and the directors sanctioning such a loan will render them individually liable, unless a protest be entered at the first monthly meeting subsequent to the making of such loan.[12]

Auditors.

768. Two auditors shall be elected annually by the stockholders from their number at their annual meeting in January, and one auditor shall be elected by the depositors from their number on the first Monday of each December, notice of which election shall be posted conspicuously in the bank room for at least three weeks prior to the election of such auditor, all of which shall serve for one year.[13]

Duty of Auditors—Statement.

769. It shall be the duty of the auditors to audit all books, papers, and vouchers of the company annually, or at any time when called upon in writing so to do by the president or any ten of the stockholders, or twenty of the depositors when joined by at least five of the stockholders, and each of these audits shall be rendered in writing, which shall give a statement of the assets and liabilities of said company; also a detailed statement of the character and nature of all notes and securities held by the association, and such statement shall be posted conspicuously in the office.[14]

[12] Act of May 18, 1893, Sec. 9, P. L. 91.
[13] Act of May 18, 1893, Sec. 9, P. L. 91.
[14] Act of May 18, 1893, Sec. 6, P. L. 91.

Bond of Officers.

770. Any person appointed to any position in any such association requiring the receipt, payment, management, or use of money belonging to such association shall, before entering upon the discharge of his duties, become bound with two or more good and sufficient sureties or insurance bonds, in such sum and form as the directors shall require and approve; and the directors may also require from any other employees of such association, bonds with good and sufficient sureties for the faithful discharge of their duties.[15]

Amendments to Articles of Association.

771. Any association may alter or amend its articles of association, and may alter or rescind any by-laws, or make any additional by-laws, with the consent of the majority of its members present at a special meeting convened for such purpose, but the notice calling such meeting shall set forth fully and clearly the proposed alterations, amendment, rescission or addition; and any alteration or amendment of the articles of association shall be approved, filed, recorded, and certified in the same manner as the original articles of association.[16]

[15] Act of May 18, 1893, Sec. 12, P. L. 92.
[16] Act of May 18, 1893, Sec. 14, P. L. 93.

CHAPTER LIV.

CORPORATIONS FOR THE PRESERVATION OF GAME AND FISH.

772. Incorporation.
773. Corporations may have Special Police.
774. Governor to Appoint Police.
775. Oath of Office and Powers of Police.
776. Badge of Office to be Worn.
777. Compensation of Police.
778. Dismissal of Police.

Incorporation.

772. [Corporations may be formed for] the preservation of game and fish.[1]

Corporations may Have Special Police.

773. Any corporation, organized under the laws of this Commonwealth for the preservation and propagation of fish in this Commonwealth, may apply to the governor to commission such persons as the said corporation may designate to act as policemen for the protection of the property of such corporation.[2]

Governor to Appoint Police.

774. The governor, upon such application, may appoint such persons, or so many of them as he may deem proper, to be such policemen, and shall issue to such person or persons so appointed a commission to act as such policemen.[3]

Oath of Office and Powers of Police.

775. Every policeman so appointed shall, before entering upon the duties of his office, take and subscribe the oath required by the eighth article of the Constitution, before the

[1] Act of April 29, 1874, Sec. 1, P. L. 73. Such corporations are of the first class, not for profit.

[2] Act of June 10, 1881, Sec. 1, P. L. 101.

[3] Act of June 10, 1881, Sec. 2, P. L. 101.

recorder of the county in which the property of said corporation may be situated, which oath, after being duly recorded by such recorder, shall be filed in the office of the secretary of state, and a certified copy of such oath, made by the recorder of the county, shall be recorded with the commission in the county in which the property of such corporation, for which such policeman is appointed, may be situated, and in which it is intended said policeman shall act; and such policemen so appointed shall severally possess and exercise all the powers of policemen in the county in which they shall be so authorized to act as aforesaid, and the keepers of jails and lockups or station houses in said county are required to receive all persons arrested by such policemen for the commission of any offense against the laws of this Commonwealth upon the premises of any such corporation, to be dealt with according to law.[4]

Badge of Office to be Worn.

776. Such corporation police shall, when on duty, severally wear a metallic shield with the word "police" and the name of the corporation for which appointed inscribed thereon, and said shield shall always be worn in plain view, except when employed as detectives.[5]

Compensation of Police.

777. The compensation of such police shall be paid by the corporation for which the policemen are respectively appointed, as may be agreed upon between them.[6]

Dismissal of Police.

778. Whenever any corporation shall no longer require the services of any policeman as aforesaid they may file a notice to that effect under their corporate seal, attested by their secretary, in the office where the commission of such policeman has been recorded, which shall be noted by the recorder upon the margin of the record where such commission is recorded, and thereupon the power of such policeman shall cease and be determined.[7]

[4] Act of June 10, 1881, Sec. 3, P. L. 101.
[5] Act of June 10, 1881, Sec. 4, P. L. 101.
[6] Act of June 10, 1881, Sec. 5, P. L. 101.
[7] Act of June 10, 1881, Sec. 6, P. L. 101.

CHAPTER LV.

CORPORATIONS FOR PREVENTION OF CRUELTY TO CHILDREN.

779. Incorporation.
780. Policemen for Such Corporations may be Appointed by the Governor.
781. Commissions to be Issued.
782. Oath of Office—Powers and Duties.
783. Secretary of Commonwealth to Issue Certificate of Appointment.
784. Compensation.
785. Removal from Office.

Incorporation.

779. In addition to the corporations not for profit of the first class, authorized to be created by the second section of "the Corporation Act of 1874," there may be formed, under the provisions of said act and the several supplements thereto, associations for the prevention of cruelty to children and aged persons, and said associations shall have the power to receive and hold such real and personal estate as may be necessary for their purposes: Provided, that the clear yearly value or income of the real estate so held shall not exceed an amount equal to twenty thousand dollars.[1]

Policemen for Such Corporations may be Appointed by the Governor.

780. Any corporation so formed, as provided in the first section of this act, shall have power to apply to the governor of the Commonwealth to commission such persons as the said corporation may designate, to act as policemen for said corporation.[2]

Commissions to be Issued.

781. The governor, upon such application, may appoint such persons, or either of them, as he may deem proper, to

[1] Act of May 25, 1887, Sec. 1, P. L. 265.
[2] Act of May 25, 1887, Sec. 2, P. L. 265.

be such policemen, and shall issue a commission to such persons to act as such policemen.[3]

Oath of Office—Powers and Duties.

782. Every policeman so appointed shall, before entering upon the duty of his office, take and subscribe the oath required by the seventh article of the Constitution before the recorder of the county in which said corporation is located, which oath, after being duly recorded by said recorder, shall be filed in the office of the secretary of the Commonwealth; and such policemen, so appointed, shall severally possess and exercise all the powers of a policeman, in any county in which they may be directed by said corporation to act, and the keepers of jails, lockups, station houses, in any of said counties, are required to receive all persons arrested by such policemen for the commission of any offenses, for cruelty to children and aged persons, and to be dealt with according to law.[4]

Secretary of Commonwealth to Issue Certificate of Appointment.

783. It shall be the duty of the secretary of the Commonwealth to issue a certificate, showing the appointment of any such persons as policemen, as aforesaid, which certificate shall be evidence of the authority of said person to act as policeman, as aforesaid, in any of the counties of this Commonwealth.[5]

Compensation.

784. The compensation of such police shall be paid by the corporation for which the policem[e]n are respectively appointed, as may be agreed upon between them.[6]

Removal from Office.

785. When any corporation shall no longer require the service of any policeman, so appointed as aforesaid, it may file a notice to that effect, under its common corporate seal, attested by its secretary, in the office of the secretary of the Commonwealth, and thereupon the power of such policeman shall cease and be determined.[7]

[3] Act of May 25, 1887, Sec. 3, P. L. 265.
[4] Act of May 25, 1887, Sec. 4, P. L. 265.
[5] Act of May 25, 1887, Sec. 5, P. L. 265.
[6] Act of May 25, 1887, Sec. 6, P. L. 265.
[7] Act of May 25, 1887, Sec. 7, P. L. 265.

CHAPTER LVI.

CORPORATIONS FORMED BY TRUSTEES AND EXECUTORS.

786. Corporations not for Profit. 787. Corporations for Profit.

Corporations not for Profit.

786. Whenever in and by the last will and testament of any testator, being a resident of this Commonwealth at the time of his death, devises or bequests of real and personal estate, or both, shall be made to trustees for the purpose of founding and maintaining any literary, medical, or scientific undertaking, library association, or the promotion of music or other fine arts, to be free to the public, and to be supported wholly from the property so devised or bequeathed, or the income thereof, and it is further by such will ordered or recommended that a corporation be formed to which the devised property and estate shall be conveyed by the said trustees, and upon which shall devolve the carrying into effect of the said testator's will touching such literary, medical, or scientific undertaking, library association, or the promotion of music or other fine arts, in all such cases, it shall be lawful to insert in any application for such incorporation, and under the General Incorporation Act of 1874, a provision or provisions that, for the perpetuating a line of successors in such corporation, whenever any vacancy shall happen in the board of directors by reason of the death, resignation, or removal from the proper county of any member thereof, the remaining directors may, by a majority vote of the whole remaining number thereof, elect a director to fill such vacancy. And that, where such will shall further direct that any one or more persons shall by virtue of their office be members of such board of directors, it shall be lawful to embody such direction in the said certifi-

cate of incorporation, under the said General Incorporation Act of 1874, as part of the organic law of such corporation.[1]

Where a proposed corporation is intended to carry out the purposes of a will the charter must conform to the provisions of the will.

Testatrix gave her whole residuary estate to establish an industrial home for orphan girls. She directed that the girls should be instructed in domestic and industrial duties, such as would fit them for employment in stores, or for seamstresses or domestics, or for any analogous occupations. She further directed her executor to procure a charter for the institution, and named four ladies as corporators, together with such other persons as might be named by her executor. Upon the death of testatrix two of said ladies were found to have died before her, and one of the remaining two only was willing to sign the charter which the executor caused to be prepared. The other proposed corporators were all men, thirteen in number. The proposed charter set forth the purposes of the institution as specified in the will of testatrix, with this addition: "It being intended, however, that the primary object of the Home shall be the fitting and training of such orphan girls as nurses." Said proposed charter further declared that the other lady named by the testatrix should be eligible for election at any time, but all vacancies thereafter occurring were to be filled by men only. Provision was also made for an advisory board of fifteen ladies, under the control of the board of directors, and to be elected by them. It was held that the proposed charter was inconsistent with the terms of the will, and was properly refused.[2]

Corporations for Profit.

787. Corporations for profit may be organized by executors or trustees acting under a will authorizing or directing them to carry on or continue a business of the testator with

[1] Act of June 25, 1885, P. L. 177.
[2] Vaux's Ap., 109 Pa. 497 (1885).

any other purpose than that of winding up the same, in the usual manner, whenever the business is such that a charter could have been obtained by the testator, to conduct the same, under the then existing laws of this Commonwealth. And the executors or trustees may unite with others in the organization of such corporations, and contribute the property, the legal title to which is vested in them, as capital to the corporations on terms to be agreed upon by the associates, and accept stock in the corporations in lieu thereof.

First.—The whole of the proceeds of the trust estate, whether contributed or sold, and whether paid for by shares or money, shall be held on the same uses and for the same trusts and persons, and subject to the same powers, as the estate and property was held for or under before the organization.

Second.—All persons having a beneficial interest, vested or contingent, who are in being at the time of such organization, and are of full age, shall consent in writing to the organization. All persons who are in being and interested, immediately or contingently, if under age or *non compos mentis*, shall, by a guardian or committee to be appointed for that purpose, consent. The husbands of all married women interested, if not living separate and apart, shall consent.

Third.—The Orphans' Court of the county shall, upon petition, inquire into the circumstances and give their sanction to the terms and conditions of the organization. In appointing guardians or committees to inquire and consent under this act, no security shall be demanded, nor shall such guardians or committees be entitled to receive any property of the beneficiary, other than the compensation for his services ordered by the Court.[3]

[3] Act of April 22, 1889, P. L. 42.

CHAPTER LVII.

DRAINAGE AND MEADOW COMPANIES.

788. Incorporation.
789. Lands of several Owners may be Drained.
790. Commissioners to be Appointed—Their Powers, etc.
791. Commissioners to Estimate Damage.
792. Assessment of Costs.
793. When Townships to Bear Part of Expense.
794. Court to Appoint Reviewers on Appeal.
795. Owners and Supervisors to Constitute a Corporation.
796. Manner of Collecting Assessments.
797. Charters to be Issued to Drainage Corporation.
798. Corporate Powers.
799. Officers to Make Assessment.
800. Contiguous Meadow Companies May Consolidate.
801. Manner of Consolidation When Lands Lie in More Than One County.
802. Name of Consolidated Company.

Incorporation.

788. [Corporations may be formed for] maintaining or erecting walls or banks for the protection of low-lying lands.[1]

[Corporations may be formed for] the construction and maintenance of sewers, culverts, conduits, and pipes, with all necessary inlets and appliances for surface, under-surface, and sewage drainage for the health, comfort, and convenience of inhabitants, and sanitary improvements in cities, boroughs, and townships of the Commonwealth, and for this purpose to enter upon and occupy any public highway with the consent of the local authorities.[2]

Lands of Several Owners may be Drained.

789. Any swampy or wet lands, belonging to several

[1] Act of April 29, 1874, Sec. 2, P. L. 73.
[2] Act of June 10, 1893, P. L. 435.

owners, disjointly, may be drained at the common expense, under the following regulations:[3]

Commissioners to be Appointed—Their Powers, Etc.

790. Upon the petition of a majority of said owners of such wet or swampy lands, forming a continuous swamp or marsh, the Court of Quarter Sessions of the county, or if lying within two counties, the nearest court shall appoint three disinterested persons, who shall be commissioners, with power to view the wet lands described; and if in their judgment to drain them shall be practicable, they shall proceed to lay out a drain, measuring the length and ascertaining the depth, as near as may be with ordinary facilities; they shall also have power, and it shall be their duty, to make a survey of such swampy or wet land, to get its contents and quantity owned by each landholder, and make an estimate of the cost of constructing said drain.[4]

Commissioners to Estimate Damage.

791. Said commissioners shall also estimate the damage sustained by any of said landholders, or any other person, by the construction of such drain; also the proportion of the cost of construction to be borne by each landowner owning land.[5]

Assessment of Costs.

792. In assessing the amount to be borne by each landholder of the cost of opening such drain, the estimate shall be made with reference to, and based upon, both the amount of land made useless by such swamp and the benefits which will result from such improvement, and in no case to exceed the estimated benefits.[6]

When Townships to Bear Part of Expense.

793. If, in the judgment of the commissioners, the swamp is a public nuisance, then they shall have power to say what portion of the expense shall be borne by the township or townships in which said swamp lies.[7]

[3] Act of April 5, 1870, Sec. 1, P. L. 47.
[4] Act of April 5, 1870, Sec. 2, P. L. 47.
[5] Act of April 5, 1870, Sec. 3, P. L. 47.
[6] Act of April 5, 1870, Sec. 4, P. L. 47.
[7] Act of April 5, 1870, Sec. 5, P. L. 47.

Court to Appoint Reviewers on Appeal.

794. If any one of the parties shall feel aggrieved by the assessment and verdict of these commissioners, then, upon his appeal and petition, the court shall appoint six disinterested commissioners to review the whole case and report, and their report, when confirmed by the Court, shall be final.[8]

Owners and Supervisors to Constitute a Corporation.

795. When their proceedings shall be gone through with, the owners of such swamp and the supervisors of the township or townships, as the case may be, shall constitute a corporation; and the time and place of its first meeting shall be fixed by the court, and a yearly meeting thereafter shall be held; and said corporation, acting through a majority, shall have power to open and repair such drain at the common expense, in proportion to the assessment made by the commissioners.[9]

Manner of Collecting Assessments.

796. Shall have power to collect as ordinary debts are collected.[10]

Charters to be Issued to Drainage Corporation.

797. The Court of Quarter Sessions, before which proceedings shall be had, is hereby authorized and required, when the report of the commissioners is confirmed, to make the necessary charter, giving the owners of swamp lands, which by the aforesaid act are made a body corporate, the necessary powers to carry out the intention of the act to which this is a supplement, and also to give a name to said corporation, and fix the time and place for its first meeting.[11]

Corporate Powers.

798. The said corporation, when organized, shall have power to lay and collect assessments; which assessments shall be made in the proportion indicated by the commis-

[8] Act of April 5, 1870, Sec. 6, P. L. 47.

[9] Act of April 5, 1870, Sec. 7, P. L. 47.

[10] Act of April 5, 1870, Sec. 8, P. L. 47. The Act of May 9, 1871, P. L. 263, relating to re-drainage, was declared unconstitutional in Rutherford's Case, 72 Pa. 82 (1872).

[11] Act of June 15, 1871, Sec. 1, P. L. 388.

sioners in their report, and said assessments or tax, until paid, shall be a lien upon or against the real estate and the personal property that may be upon the same, belonging to the real owner of said swamp or part of said swamp lands.[12]

Officers to Make Assessment.

799. When authorized by the corporation it shall be the duty of the president, assisted by the secretary, to make an assessment, in accordance with the meaning of the act to which this is a supplement; and a duplicate, with his warrant, to the treasurer of said corporation, shall be his authority to collect said assessment as county rates and levies are collected; and said corporation shall not have power to assess or collect for any other purpose than that authorized by this act, and the act to which this is a supplement.[13]

Contiguous Meadow Companies May Consolidate.

800. Where the districts of two or more meadow companies are contiguous to each other, it shall be lawful for them to consolidate their franchises and corporate rights, and to become one company, by an agreement duly executed and recorded in the office for recording of deeds in each county in which the districts of said meadow companies shall extend.[14]

Manner of Consolidation When Lands Lie in More Than One County.

801. It shall also be lawful for the Court of Common Pleas of any county in which the major part of the lands of any meadow company may lie, upon the application of the said company, to decree the consolidation of said company with any other meadow company controlling contiguous territory, whenever, in the opinion of said Court, such consolidation would enure to the public interest; and the said decree shall be recorded in the office for recording deeds in each county into which the districts of said meadow companies shall extend.[15]

[12] Act of June 15, 1871, Sec. 2, P. L. 388.
[13] Act of June 15, 1871, Sec. 3, P. L. 388.
[14] Act of May 15, 1893, Sec. 1, P. L. 48.
[15] Act of May 15, 1893, Sec. 2, P. L. 48.

Name of Consolidated Company.

802. In case of consolidation of two or more meadow companies, by agreement, or by decree as aforesaid, the consolidated company shall be known by the name and be subject to all the provisions of the charter of that one of the original companies which controlled the larger territory prior to the consolidation.[16]

[16] Act of May 15, 1893, Sec. 3, P. L. 48.

CHAPTER LVIII.

ELECTRIC LIGHT, HEAT, AND POWER COMPANIES.

803. Incorporation.
804. Powers.
805. Existing Companies may Accept Act.
806. Boroughs may Manufacture Electricity and Purchase Plant of Corporation.
807. Boroughs Owning Electric Plants.

Incorporation.

803. Sub-division eleven, class second, corporations for profit, in the act entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, which reads as follows: "The manufacture and supply of gas, or the supply of light or heat to the public by any other means," be and the same is hereby amended to read as follows: The manufacture and supply of gas, or the supply of light, heat, and power, by means of electricity, or the supply of light, heat, or power to the public by any other means.[1]

[1] Act of May 8, 1889, Sec. 1, P. L. 136. By the Act of July 2, 1895, P. L. 425, power is given to water companies to distribute electricity.

Electric light companies cannot be chartered to supply electricity to more than one municipality: Home Electric Co., 11 Pa. C. C. R. 179 (1892).

It was held prior to the passage of the Act of May 8, 1889, that the Act of 1874, Sec. 34, applied to electric light companies: Wilkes-Barre Light Co. *v.* Wilkes-Barre Light, Heat & Motor Co., 4 Kulp, 47 (1886); but such companies did not have exclusive privileges: Scranton Electric Light & Heat Co. *v.* Scranton Illuminating Heat & Power Co., 3 Pa. C. C. R. 628 (1886); 122 Pa. 154; Electric Light Case, 2 Chester Co. Rep. 98 (1883).

The councils of a city in giving permission to an electric light company to enter upon streets, cannot couple the permission with any condition or restriction not imposed by the act under which the company was

Powers.

804. Companies incorporated under the provisions of this act for the supply of light, heat, and power, or any of them, to the public by electricity shall, from the date of the letters-patent creating the same, have the powers and be governed, managed, and controlled as follows:

Every such corporation shall have the authority to supply light, heat, and power, or any of them, by electricity, to the public in the borough, town, city, or district where it may be located, and to such persons, partnerships, and corporations, residing therein or adjacent thereto, as may desire the same, at such prices as may be agreed upon, and the power also, to make, erect, and maintain the necessary buildings, machinery and apparatus for supplying such light, heat, and power, or any of them, and to distribute the same, with the right to enter upon any public street, lane, alley, or highway for such purpose, to alter, inspect, and repair its system of distribution: Provided, that no company which may be incorporated under the provisions of this act shall enter upon any street in any city or borough of this Commonwealth until after the consent to such entry of the councils of the city or borough in which such street may be located, shall have been obtained.[2]

Existing Companies may Accept Act.

805. Any association of persons or corporations heretofore engaged in the business of supplying light, heat, and power, or any of them, by electricity, under color of a charter or letters-patent of this Commonwealth, issued under the provisions of the act to which this act is a supplement, upon accepting the provisions of this act by writing under seal of the company, filed in the office of the secretary of the Commonwealth, and filing therewith its letters-patent or charter, which shall be a surrender and acceptance thereof, shall thereupon be a body corporate hereunder, and be entitled to and possessed of all the privileges, immunities, franchises, and powers conferred by this act upon corporations to be created

incorporated, unless the company agrees to accept the same and be bound thereby, and even such conditions must harmonize with and in no wise conflict with the provisions of the act: Scranton Electric Light & Heat Co. *v.* Scranton City, 1 Lack. Jur. 177 (1889).

[2] Act of May 8, 1889, Sec. 2, P. L. 136.

under the same, and all the property, rights, easements, and privileges belonging to said associations and corporations, theretofore acquired by gift, grant, conveyance, municipal ordinance or assignment, or otherwise, upon such acceptance as aforesaid, shall be, and hereby are ratified, approved, confirmed and assured unto such acceptors and corporations, with like effect and to all intents and purposes, as if the same had been originally acquired by and under the authority of this act, and such company or corporation shall thereafter be governed by the provisions of this act. And the governor shall forthwith issue to the said acceptors letters-patent under this act, under the same name as the company bore which surrendered its charter or letters-patent, and for the same territory, and the corporation shall receive credit for any bonus paid by the former corporation: Provided, that this act shall not be so construed as to permit any corporation accepting its provisions, to enter into any city or borough without assent of councils, except in so far as the councils thereof have heretofore, or shall hereafter, give their assent thereto.[3]

Boroughs may Manufacture Electricity and Purchase Plant of Corporation.

806. From and after the passage of this act all boroughs now incorporated, or that may hereafter be incorporated, shall have the right to manufacture electricity for commercial purposes for the supply and use of the inhabitants of said boroughs, and may introduce the arc or incandescent electric light or any other form or style of electricity that may be deemed most expedient and desirable, and said boroughs may enact such ordinances as may be proper and necessary to introduce and supply the inhabitants of said boroughs who may desire to use the said electricity in their dwelling-houses, store-rooms, and other places in said boroughs, and regulate by ordinances the price to be charged for the same: Provided, that in all boroughs so desiring to furnish electric lights, where electric light companies organized under laws of this Commonwealth are already furnishing electric lights to such boroughs or the public, such borough shall endeavor, and is hereby authorized and empowered, to purchase the works of such corporation at such price as may be agreed upon

[3] Act of May 8, 1889, Sec. 2, P. L. 136.

by councils of said boroughs and a majority in value of the stockholders of such corporation.

In case of failure so to agree, such borough may present a petition to the Court of Common Pleas of the county in which such borough is located, asking for the appointment of viewers to assess the value of the plant and works so taken; whereupon the court shall appoint seven discreet and disinterested freeholders of said county, neither of whom shall be stockholders in said corporation or taxpayers in said borough, and shall appoint a time for their meeting, of which meeting ten days' notice shall be given to all parties in interest. And the said viewers having first been duly sworn or affirmed, faithfully, justly, and impartially to appraise said property, and having viewed the premises and taken such testimony as may be offered by either party touching the value of said property and franchises, they shall estimate and determine what amount of damage has been or may be sustained by such corporation, and to whom payable, and make report thereof to the said court, which report having been confirmed by the said court, judgment shall be entered thereon.

Each of said viewers shall be entitled to receive two dollars for each day necessarily employed in the performance of the duties herein prescribed.

Either party may at any time, within thirty days after the confirmation of such report, appeal therefrom to the said court.

After such appeal either party may put the cause at issue in the form directed by said court, and the same shall then be tried by said court and a jury, and after final judgment either party may have an appeal to the Supreme Court in the manner prescribed in other cases.

The court shall have power to order what notices shall be given in conection with any part of the proceedings, and may make all such orders connected with the same as may be deemed requisite.

If any exceptions be filed with any appeal to the proceedings, they shall be speedily disposed of, and if allowed, a new view shall be ordered, and if disallowed the appeal shall proceed as before provided.[4]

[4] Act of May 20, 1891, Sec. 1, P. L. 90. The act is constitutional: Linn *v.* Chambersburg Borough, 160 Pa. 511 (1894).

Boroughs Owning Electric Plants.

807. The provisions of this act shall apply to all boroughs now incorporated which have already provided a plant for the manufacture of electricity for lighting said boroughs at public expense, or for commercial purposes for the use of the inhabitants of said boroughs, and all indebtedness heretofore contracted or incurred by said boroughs, in pursuance of a vote of the electors of said boroughs in the manner now provided by law for the increase of the indebtedness of municipal corporations in this Commonwealth, is hereby made valid and confirmed.[5]

[5] Act of May 20, 1891, Sec. 3, P. L. 90.

CHAPTER LIX.

EXHIBITION COMPANIES.

808. Formation and General Powers.
809. Contents of Charter and Certificate.
810. Power to Borrow Money Granted and Regulated.
811. Power to Hold Real Estate and Right of Eminent Domain Granted.
812. Existing Companies may Apply for Benefit of Act.
813. Exhibition Companies may Mortgage Property.
814. Proceedings on Mortgages.
815. Purchasers at Mortgage Sale to Stand in Place of Former Company.

Formation and General Powers.

808. Corporations may be formed, in the manner herein mentioned, by the voluntary association of five or more persons, or as otherwise hereinafter provided, for the purpose of educating the public by exhibiting artistic, mechanical, agricultural, and horticultural products, and providing public instruction in the arts and sciences: Provided, however, that no such company shall be organized for profit, but all contributions thereto by members or others, and all proceeds realized from the business of such company, shall be applied to the purpose declared in its charter. When so formed, such company, by virtue of its existence, shall have the following powers:

I. To have perpetual succession by its corporate name, subject to the power of the General Assembly and the Constitution of the Commonwealth.

II. To maintain and defend judicial proceedings.

III. To make and use a common seal and alter the same at pleasure, and to accept and use such contributions and loans, from its members, or others, of money or property, real or

personal, as may be advantageous to the purpose of its organization.

IV. To hold, purchase, maintain, lease, mortgage, sell, and transfer real and personal property as the purposes of the corporation may require, and the right also to enter upon, take, and occupy such public lands, easements, and other property, as may be required, from time to time, for the purposes of its corporation.

V. To appoint and remove and suitably compensate such officers and agents as the business of the company requires.

VI. To make by-laws, not inconsistent with law, regulating its membership and the election of its officers and directors, and the management of its property and business affairs.

VII. To enter into any obligation necessary for the transaction of its business.[1]

Contents of Charter and Certificate.

809. The charter of such intended corporation shall be subscribed by five or more persons, all of whom shall be citizens of this Commonwealth, who shall certify in writing to the governor:

I. The name of the corporation.

II. The place where its business is proposed to be conducted, at which place shall be located its general office.

III. The names and residences of the subscribers.

IV. The number of its directors, and the names and residences of those chosen for the first year.

Notice of the intention to apply for such charter shall be inserted in two newspapers of general circulation, printed in the county within which the general office is proposed to be located, once a week for three weeks, setting forth briefly the character and object of the proposed corporation, the intention to apply for such charter, and the location of its general office and principal place of business. Such certificate shall give the name and address of the treasurer of the company, which may be an incorporated State or national bank, authorized to do business within the county where the principal office of the proposed corporation is located; said certificate shall be acknowledged by at least three of the sub-

[1] Act of June 14, 1887, Sec. 1, P. L. 383. As to the taking of public land, see Section 811, *infra*.

scribers thereto before the recorder of deeds of the county in which its principal office is located; and the subscribers shall also make and subscribe an oath or affirmation before him, to be indorsed in such certificate, that the statements therein contained are true; the certificate so indorsed, accompanied with proof of publication of notice as hereinbefore provided, shall then be produced to the governor of the Commonwealth, who shall examine the same, and, if he find it to be in the proper form and within the purposes herein named, shall indorse his approval thereon, and direct letters-patent to issue in the usual form, incorporating the subscribers and their associates and successors into a body politic and corporate, in deed and in law, by the name chosen, and the original certificate, with all its indorsements, shall be recorded in the office of the secretary of the Commonwealth, in a book to be kept by him for such purpose, and he shall forthwith furnish to the auditor-general an abstract therefrom, showing the name and location of the company, and the name and address of its treasurer. The original certificate, with all of its indorsements, shall then be recorded in the office for recording deeds, in the county in which is located its general office, and from thenceforth the subscribers thereto, their associates and successors, shall be a corporation for the purposes and upon the terms named in said certificate: Provided, that no franchise granted under this act shall be exercised for the exclusive use or benefit of any part or class of the public.[2]

Power to Borrow Money Granted and Regulated.

810. It shall be lawful for any corporation named in this act to borrow money and secure any indebtedness created by it, by issuing bonds, not to exceed the sum of two hundred thousand dollars, with or without interest coupons attached thereto, and to secure the same by a mortgage or mortgages. for the use of its bondholders, upon its property, real and personal, and its franchises, but no such bond or indebtedness shall bear a rate of interest exceeding 6 per centum per annum.[3]

[2] Act of June 14, 1887, Sec. 2, P. L. 383. Under the Act of April 15, 1891, P. L. 18, the certificate may be sworn to before a notary public.

[3] Act of June 14, 1887, Sec. 3, P. L. 383.

Power to Hold Real Estate and Right of Eminent Domain Granted.

811. The taking of such public lands for the erection and maintenance thereon of buildings, or other structures, for the public exposition of manufactured articles, agricultural products, minerals, and all articles pertaining to the arts and sciences, and providing public instruction in the arts and sciences, by the exercise of the right of eminent domain, is hereby declared to be taking of said land for public use. Any corporation chartered under this act for the purpose herein mentioned, or any corporation heretofore chartered for like purpose and accepting the provisions of this act, as hereinafter prescribed, shall have the right of eminent domain for the purpose of appropriating to its use such public lands, easements, and other property, as may be necessary for the purpose of its incorporation; such right, however, shall not be exercised as to any burying ground, passenger railroad, station house, nor as to any street, alley, highway, wharf landing, or other property of any incorporated city, town, or borough, without the consent of its councils first had to such appropriation, by ordinance duly passed and approved, nor shall such right in any event be exercised as to any tide-water wharf, nor as to that part of any other public wharf, or river landing, which has been theretofore graded and paved by the municipality, and if not so graded and paved, such wharf or river landing may be appropriated as herein provided, any limitation of use thereof by the municipality by donation, dedication, appropriation, statute, or otherwise, to the contrary notwithstanding.[4]

Existing Companies may Apply for Benefit of Act.

812. Any company, heretofore incorporated, not for profit, and for any of the purposes named in this act, upon accepting the provisions of this act in writing under the seal of the corporation, filed in the office of the secretary of this Commonwealth, together with a surrender of its letters-patent or charter, which shall be filed with such certificate, shall thereupon become and be a body corporate hereunder, and shall be entitled to and possessed of all the privileges, franchises, and powers conferred by this act upon corporations to be created under this act, and all the properties, rights, and privi-

[4] Act of June 14, 1887, Sec. 4, P. L. 383.

leges belonging to such corporation theretofore acquired by gift, grant, conveyance, municipal ordinance, assignment, or otherwise, upon such surrender, shall be and is hereby ratified, approved, confirmed, and assured to such corporation, with like effect and to all intents and purposes as if the same had been originally acquired by and under authority of this act; and such corporation shall thereafter be governed solely by the provisions of this act; and the governor shall forthwith cause new letters-patent, under this act, to issue to such corporation, under the same name as the company had in the charter under which it was originally incorporated.[5]

Exhibition Companies may Mortgage Property.

813. It shall be lawful for any body corporate which has been or may hereafter be incorporated by or under the laws of this Commonwealth, with powers and franchises to hold and maintain an exhibition of natural and artificial objects and products, anywhere within this Commonwealth, or elsewhere, to mortgage any or all of its real and personal property, of any and every description, and also all its franchises and privileges, for the purpose of securing the payment of any indebtedness or evidences of indebtedness which such body corporate may create according to law, with the same effect as to the interest of such corporation in such property of any kind, and in its franchises, as in the case of the mortgaging of a freehold interest and title, as to lien, notice, evidence, and priority of payment: Provided, that such mortgages shall be acknowledged and recorded in the same manner as mortgages of real estate.[6]

Proceedings on Mortgages.

814. Any mortgages which may be created by virtue of the preceding section shall be sued out in the same manner as the law shall provide for mortgages of real estate.[7]

Purchasers at Mortgage Sale to Stand in Place of Former Company.

815. The person or persons for whom or on whose account the property and franchises of any such corporation may be

[5] Act of June 14, 1887, Sec. 5, P. L. 383.
[6] Act of April 17, 1878, Sec. 1, P. L. 22.
[7] Act of April 17, 1878, Sec. 2, P. L. 22.

purchased at any sale which may be had under and in pursuance of any mortgage which may be created under the provisions of the first section of this act, shall be and they are hereby constituted a body politic, with all the rights, immunities, and privileges, and subject to all the restrictions and liabilities of the corporation whose property and franchises may be thus sold.[8]

[8] Act of April 17, 1878, Sec. 3, P. L. 22.

CHAPTER LX.

FERRY, WHARF, AND BRIDGE COMPANIES.

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Incorporation.

816. [Corporations may be formed for] the construction and maintenance of a bridge over streams within this State.[1]

[Corporations may be formed for] the establishment and maintenance of a ferry.[2]

[1] Act of April 29, 1874, as amended by Act of April 17, 1876, Sec. 2, P. L. 30, and Act of June 10, 1893, P. L. 435.

[2] Act of April 29, 1874, as amended by the Act of April 17, 1876, Sec. 2, P. L. 31, and Act of June 10, 1893, P. L. 435.

[Corporations may be formed for] the construction and maintenance of a wharf or wharves for public and private use, and the maintenance of any unincorporated wharf or wharves already constructed.[3]

A toll bridge owned by a corporation is a public highway, and as such may be used by a street railway, and such use does not constitute a taking of, or an injury to the property of the bridge company in the exercise of the power of eminent domain. "It is a use which is reasonably consistent with the purpose for which the bridge was erected, and is necessary for public travel and accommodation."[4]

Contents of Charter.

817. The charter of a ferry, wharf, or bridge company shall also state:

I. The stream over or on which the same is proposed to be erected.

II. The place and county or counties of its location.

III. Its distance from any other wharf, bridge, or ferry over or on the same stream which shall have been before that date incorporated under the laws of this Commonwealth.[5]

An exclusive privilege given to a ferry company to transport for hire does not prevent a private citizen from using his own boat in crossing the stream,[6] nor does it give the right to make a landing upon the property of a private person or upon a highway.[7]

Where a special act gives a ferry company exclusive privileges, a charter will not be granted to a company to include practically the same termini as those of the other corporation.[8]

[3] Act of April 29, 1874, as amended by the Act of April 17, 1876, Sec. 2, P. L. 31, and Act of June 10, 1893, P. L. 435.

[4] Pittsburgh & West End Pass. Ry. *v.* Point Bridge Co., 165 Pa. 37 (1894).

[5] Act of April 17, 1876, Sec. 7, P. L. 30, amending the Act of April 29, 1874, Sec. 31.

[6] Sunbury Steam Ferry, etc., Co. *v.* Heim, 4 Pennypacker, 325 (1884).

[7] Pittsburgh & Lake Erie R. R. *v.* Jones, 111 Pa. 204 (1886).

[8] Ritter & Sons' Ferry Co., 14 Pa. C. C. R. 10 (1893).

There is no restriction as to the distance one bridge must be from another.[9]

After a bridge has been destroyed it cannot be re-located, but its elevation may be changed to the extent that experience shows to be necessary, and the right to elevate carries with it, by necessary implication, the right to construct reasonable and proper approaches.[10]

Management of Bridge and Ferry Companies—Management—Condemnation Proceedings.

818. All bridge and ferry companies incorporated under this statute, when not otherwise provided in this act, shall, from the date of the letters-patent creating the same, be governed, managed, and controlled, as follows:

That before the directors of any such corporation shall proceed to build any such bridge or ferry, it shall be lawful for them to contract with the owner or owners of any land for the purchase of so much thereof as shall be necessary for the purpose of erecting and completing said bridge or ferry, and making all the necessary works and causeways to and from the same, if they can agree with the said owner or owners; but in case they cannot agree, proceedings shall be had as provided in Section 41 of this act. The said bridge or ferry shall be so constructed as not to interfere with the free navigation of said creek or river.[11]

Rates of Toll.

819. When the said corporation shall have erected and completed a bridge over any creek or river, under the author-

[9] Seneca Bridge Co., 11 Pa. C. C. R. 337 (1892); Bridgewater Ferry Co. *v.* Sharon Bridge Co., 145 Pa. 404 (1891); York Haven Ferry; Opinion of the Attorney-General of February 4, 1886.

[10] Commonwealth *v.* Pittston Ferry Bridge Co., 148 Pa. 621 (1892).

[11] Act of May 25, 1887, P. L. 268, amending the Act of April 29, 1874, Sec. 31.

The Act of May 25, 1887, amended the Act of April 29, 1874, Sec. 31, without apparent reference to the Act of April 17, 1876, P. L. 34. Thus the Act of 1887 omitted the portion of the Act of 1878, which provided as follows: "Whenever any fishing right or other easement is alleged to exist at, upon, or about the place where such wharf is about to be erected or constructed, said directors may contract with the owner or owners of such fishing right or easement for settlement of damages to the same."

ity of this act, the property thereof shall be vested in the said corporation, and it shall have the power to erect gates and to demand and receive tolls for crossing said bridge, at such rates as the president and directors thereof shall from time to time determine, not exceeding the rates following, namely: For every score of sheep or swine, eight cents; for every score of horned or muley cattle, twenty-five cents; for every mule or horse, driven or led, five cents; for every horse or mule, ladened or unladened, with rider, five cents; for every two-wheeled vehicle and one horse, six cents; the same with two horses, ten cents; for every four-wheeled vehicle, with one horse, ten cents; for every four-wheeled vehicle, with two horses, fifteen cents; for either of the last-named vehicles, with four horses, twenty cents; for every foot passenger, two cents: Provided, that any bridge, not wholly or in part within the limits of any city of the first or second class within this Commonwealth, that shall hereafter be constructed, or reconstructed, and the cost whereof shall be increased beyond the minimum by reason of the demands and requirements of navigation, the corporation owning the same may demand and receive tolls, not exceeding 50 per centum in excess of the above rates, in any case, where such increased rates do not produce a net revenue in excess of 6 per centum per annum upon the capital stock of such corporation: Provided further, that no such increased tolls shall be charged in any case until the same shall have been authorized by the Court of Quarter Sessions of the proper county, or if a bridge be located over a stream dividing counties, then by the Court of Quarter Sessions of the county wherein the office of the company may be situated, and in all cases said corporation shall cause to be put up and kept in some conspicuous place at the gate of said bridge a list of the rates of toll: And provided further, that all children going to and from school shall have free passage.[12]

A bridge company cannot charge in addition to the toll for vehicles a toll for passengers carried by the vehicle. "They were simply a part of the load in the conveyance, just as much as wheat, or potatoes, or trunks, or any other kind

[12] Act of May 6, 1887, P. L. 92, amending the Act of April 29, 1874, Sec. 31.

of loading, and the law gave no right to charge for the loading of a vehicle except by the charge for the vehicle itself."[13]

Penalty for Excessive Tolls or Defective Bridge.

820. If the said corporation, or any person employed for it, shall collect or demand any greater rate or prices of passing over said bridge, than what is prescribed in the list of tolls put up at the gate as aforesaid, or neglect to keep said bridge in repair, he or they shall forfeit for every such offense the sum of ten dollars, to be recovered as debts of a similar amount are recovered, one-half to be paid to the county, and the other half to the person who may sue for the same.[14]

The penalty provided by the act applies to the collection or demand of a greater sum than the prescribed tolls. It can only be exacted for each payment of the toll, although the payment involves a large number of overcharges. "The act of collecting the unlawful tolls is the offense prohibited by the statute. Whether that act be the collection of one unlawful toll, or of a hundred, it is but a single act, and it constitutes but one offense. There is no law or reason in dividing up the sum collected into as many parts as there were tolls aggregated in the collection, for the mere purpose of multiplying the penalties. What it prohibits is a collection, and a collection is a unit. No matter how many items were included in the collection, if the whole of them were embraced in the one collection but one offense was committed."[15]

Accounts—Dividends.

821. Said corporation shall keep a just account of all moneys received by their several collectors of tolls for crossing said bridge; and after deducting all contingent costs and charges, and such proportion of the income as may be suffi-

[13] Porter *v.* Dawson Bridge Co., 157 Pa. 367 (1893).

[14] Act of April 17, 1876, P. L. 34, amending the Act of April 29, 1874, Sec. 31.

[15] Porter *v.* Dawson Bridge Co., 157 Pa. 367 (1893).

cient for a fund to provide against the decay, the repairing and rebuilding of the said bridge that time and accident may render necessary, they shall semi-annually declare and make a dividend of the balance among the stockholders, first giving notice personally or by advertisement of the time and place when and where the same shall be paid, and shall cause the same to be paid accordingly, in ten days thereafter, or as soon thereafter as the same shall be demanded.[16]

Protection and Regulation of Bridges.

822. If any person or persons shall willfully pull down break, or destroy, with intent to injure, any part or parts of the said bridges, or any toll house, gates, bars, or other property of the said corporations, erected for the use of said bridges, or shall willfully deform or destroy the letters or figures in any list of the rates of toll, affixed in any place for the information of passengers, or shall willfully or maliciously obstruct or impede the passage in or over the said bridges, or any part or parts thereof, he, or she, or they, so offending, shall each of them forfeit and pay for each and every such offense, to the said corporation, the sum of ten dollars, to be recovered as other debts of a like amount are recoverable; and if any person shall be guilty of carrying any lighted cigar or pipe, or of carrying fire in any manner whatsoever, over said bridge, except in a lantern or in some vessel secured so that the probability of setting fire to said bridges shall be fully prevented, or shall discharge any pistol or gun, or any fire-arms on or near said bridges, he, she, or they so offending shall forfeit and pay to the said company the sum of five dollars each, with all other damages sustained to said bridges, for every such offense, to be recovered as aforesaid; or if any person or persons shall evade the payment of any toll or duty for passing said bridges, or ride or drive his or their horse or horses on or over said bridge in a faster gait than a walk, he, she, or they so offending shall forfeit and pay to the said corporation the sum of five dollars for every such offense, to be recovered in like manner as aforesaid; but no suit shall be brought for any of the said offenses unless commenced within thirty days after it shall be known who committed said offense, and he, she, or they so offending shall remain liable

[16] Act of April 17, 1876, P. L. 34, amending the Act of April 29, 1874, Sec. 31.

to action at the suit of said corporation for such wrongs, if the sums herein mentioned be not sufficient to repair and satisfy such damage.[17]

License of Wharf Companies in Philadelphia.

823. No wharf company within the jurisdiction of the board of wardens, for the port of Philadelphia, shall have the right to exercise its corporate franchises under this act until it has been licensed by said board of port wardens, and complied with the provisions of an act entitled "An act to establish a board of wardens for the port of Philadelphia, and for the regulation of pilots and pilotages, and for other purposes

[17] Act of April 17, 1876, Sec. 7, P. L. 30.

The Act of March 10, 1858, Sec. 1, P. L. 90, providing for the prevention and punishment of crossing a bridge without payment of tolls was as follows:

"If any foot passenger, or any person riding or driving any horse, team of horses, oxen or mules, or asses, or any wagon, carriage, or other vehicle drawn by horses, oxen, or mules, or driving any drove of horses, mules, cattle, sheep, or hogs, shall attempt to cross, without payment of toll, any bridge owned or kept by any incorporated company in this Commonwealth, it shall be lawful for the said company, their toll collector or agent, to prevent the said crossing, and to turn the said person or persons back, and to shut the gates of the said bridge, and prevent their passage, until payment of the tolls, legally and justly demandable, shall be paid; and if any person shall force his way across the said bridge, without payment of the proper toll, or shall, with intent to defraud the said company of their just toll, pass by or attempt to cross the said bridge without payment thereof, he shall be liable to a penalty in any sum not exceeding five dollars, for the use of the said company in which the gate of said bridge may be located; in every such case it shall be lawful for the said company, their toll collector or agent, to procure a warrant, in the name of the Commonwealth, from any justice of the peace, for the arrest of the person so offending, authorizing the said toll collector or agent, or any constable, to arrest and bring him before the said justice, and on a hearing of the case said justice, if the facts shall warrant it, shall give judgment against him for the said penalty, and issue process to collect the same; in any such prosecution the said toll collector or agent shall be a competent witness to prove the facts; nothing herein contained shall be construed to repeal any special provisions contained in the charter of any incorporated bridge company relative to the collection of tolls, or to the prevention or punishment of forcible or fraudulent crossing: Provided, that the foregoing penalty shall not be imposed upon any person who shall have failed to pay his or her toll by reason of the absence of the proper person to receive it."

therein mentioned," approved March 29, 1803, and its supplements.[18]

Sale of Property.

824. It shall be lawful for any bridge company, with the assent of the holders of not less than two-thirds of its capital stock, to sell or dispose of its property to any other corporation, and said corporation so purchasing shall have full power, in accordance with the purposes of its charter, to use the property so purchased for the purpose designated in the charter under which said property was built.[19]

Ferry and Wharf Companies—Additional Powers.

825. Any ferry company incorporated as aforesaid, shall have the right and power to erect and maintain a ferry, either of steam power or otherwise, across any of the streams or waters of this Commonwealth, subject to the right of prior occupants; and any ferry or wharf company may take and receive such charges for occupancy, storage, and use, and such tolls and freights for the passage of persons, vehicles, animals, and freight as may be appointed by them, subject to the approval of the Court of Quarter Sessions of the proper county, which court is required to examine the schedule of charges and toll-sheet submitted by any such corporation, and approve the same or lessen or increase the same as seems just and proper.[20]

Voting in Bridge Companies.

826. In all elections or meetings of stockholders of any turnpike, plank road, or bridge company, incorporated under any law of this Commonwealth, every stockholder shall be entitled to one vote for every share of stock by him or her held in such corporation, to be cast either in person, or by proxy duly constituted by power of attorney in writing, attested by one or more subscribing witnesses.[21]

[18] Act of April 17, 1876, Sec. 7, P. L. 34.

[19] Act of June 12, 1879, P. L. 173.

[20] Act of April 17, 1876, Sec. 8, P. L. 30.

[21] Act of June 11, 1879, P. L. 139. The Act of March 14, 1867, Sec. 1, P. L. 36, provided as follows: "That section first of an act, entitled 'An act to entitle the stockholders of any railroad company, incorporated by this Commonwealth, accepting this act, to one vote for each share of

Preferred Stock of Bridge Company.

827. It shall be lawful for any bridge company, incorporated by any special law of this Commonwealth, with the consent of a majority in interest of its stockholders, obtained at a meeting to be called for that purpose, of which public notice shall be given during thirty days, in a newspaper of the proper county, [to] issue preferred stock of the company, not exceeding the one-half of the capital stock of the corporation at such time; the holders of which preferred stock shall be entitled to receive such dividends thereon as the board of directors may prescribe, not exceeding 12 per centum per annum, payable out of the net earnings of the corporation.[22]

Power of Bridge Company to Borrow Money.

828. It shall be lawful for any bridge company, incorporated by any special law of this Commonwealth, to borrow money or secure any indebtedness created by them, by issuing bonds, with or without coupons attached thereto, and secure the same by a mortgage or mortgages, to be given and executed to a trustee or trustees for the use of the bondholders, upon their real estate, bridges, improvements, property, and corporate rights and franchises, to an amount not exceeding one-half of the capital stock of the corporation paid in, and at a rate of interest not exceeding 8 per centum per annum: Provided, that any bridge company or companies, accepting the provisions of this act, shall thereafter hold their charters subject to the provisions of the Constitution.[23]

Powers of Foreign Bridge and Ferry Companies.

829. It shall and may be lawful for any company incorporated under the laws of any other State for the establishment, maintenance, and continuance of a ferry, or for the maintenance and continuance of a bridge, between this State and any other State, upon or over any river flowing between said States, to erect and maintain piers, offices, warehouses,

stock,' approved May 20, 1865, be and the same is hereby extended to any bridge company, or hall association, incorporated by the laws of this Commonwealth, and accepting this act."

[22] Act of May 1, 1876, Sec. 1, P. L. 91.

[23] Act of May 1, 1876, Sec. 2, P. L. 91.

and all other buildings and structures necessary for the maintenance of such ferry or bridge, and conducting the freight and passenger business to be moved thereby, and to take, have and hold, in this State, real estate necessary and proper for the purchase of such ferry or bridge, and for such piers, offices, warehouses, buildings, and structures, or either, and to mortgage, lease, or convey the same, or any part therof: Provided, that nothing herein contained shall be deemed to prevent or relieve any real estate, taken or held by any such corporation under the provisions of this act, from being taxed in like manner with other real estate in this Commonwealth, and the title to any real estate in this Commonwealth, now held by or in trust for any such corporation for the purposes aforesaid, is hereby confirmed, with the same effect as if the said real estate had been purchased, held, or owned under the provisions of this act.[24]

When Private Bridge may be Condemned for Public Use.

830. When any turnpike road company, bridge company, or other corporation has heretofore erected or may hereafter erect by authority, of general or special laws, any bridge over a river, creek, or rivulet crossing any road or highway on which the public are required to travel, and such company or corporation is authorized to charge and take tolls for the use and crossing of such bridge, and at least twenty residents and taxpayers of the county where such bridge is situated, shall petition the Court of Quarter Sessions of said county, or if said bridge be located on a river, creek, or rivulet dividing two counties, then upon the petition of at least twenty residents of each county representing that the said bridge is necessary to the accommodation of public travel, and that the payment of tolls over such bridge is burdensome to the traveling public, and praying that the same shall be taken as a county bridge, the said court shall appoint six disinterested persons to view the said bridge and assess the damage, if any, which such company or corporation may sustain by the taking of the same, and make report of their proceedings to the respective court at the next term thereof: Provided, that notice shall be given in at least one newspaper published at the county seat of such intended application for at least three weeks before the presentation of such

[24] Act of June 6, 1887, Sec. 1, P. L. 352.

petition: Provided further, that when two or more toll-bridges cross the same stream and lead to the same streets or general thoroughfares, and are situated within one-fourth mile of each other, no purchase of any one of said bridges shall be made under this act, unless the assent of the stockholders of the remaining bridge or bridges be first had at a meeting called for that purpose.[25]

The fact that the legislature reserved the right to purchase the bridge after the expiration of a certain time does not imply a relinquishment by the legislature of the right to take the bridge for public use.[26]

The value of the bridge is to be determined by its value to the company that is deprived of its use. "To measure the damages by the mere cost of building the bridge would be to deprive the company of any compensation for the destruction of its franchises. The latter can no more be taken without compensation than can its tangible, corporeal property. Their value necessarily depends upon their productiveness. If they yield no money return over expenditures, they would possess little, if any, present value. If, however, they yield a revenue over and above expenses, they possess a present value, the amount of such depends in a measure upon the excess of revenue."[27]

Where a bridge belongs to a turnpike company, in a proceeding to free the bridge, it is immaterial on the question of damages, that at times part of the net receipts from the bridge were appropriated to keep up the turnpike road. The important point in ascertaining the damages is the fact that

[25] Act of May 8, 1876, Sec. 1, P. L. 131.

The Act of May 8, 1876, applies to Philadelphia County, and is not affected by the Act of May 26, 1893, P. L. 154, relating to the condemnation of bridges by cities: City Avenue & Germantown Bridge, 164 Pa. 394 (1894).

[26] Lock Haven Bridge Co. *v.* Clinton County, 157 Pa. 379 (1893).

[27] Montgomery Co. *v.* Bridge Co., 110 Pa. 54 (1885); Mifflin County Bridge *v.* Juniata County, 144 Pa. 365 (1891); Clarion Turnpike & Bridge Co. *v.* Clarion County, 172 Pa. 243 (1896).

there were net earnings; what use was made of such earnings was immaterial.[28]

Evidence is admissible as to the erection and maintenance of a free bridge a short distance from the one in question.[29]

Report of Viewers.

831. The viewers so appointed shall make report at the next term of the said court, which said report shall state particularly: First, Who of them were present at the view; second, whether they were severally sworn or affirmed; third, whether the bridge be necessary as a free bridge for public accommodation, and the payment of tolls on the same is an unjust burden on the traveling public and the people of the

[28] Clarion Turnpike & Bridge Co. *v.* Clarion County, 172 Pa. 243 (1896). In this case Mr. Justice DEAN said: "Even if the bridge were an inseparable part of the turnpike, and the whole should, as appellant contends, be treated as one corporate property, the part taken, the bridge, should be estimated at its true value, when compared with the whole. If the gross receipt of this part were larger in proportion, and the net also, than any other part of the property, and the bridge be taken from them, they lose that part of their property which is of the greatest value. The principle contended for by appellant that, if the corporate property as a whole yields no net income a part of it is of no value, is palpably unsound; the productiveness of a comparatively small part of a railroad, canal, or turnpike may maintain for public use and keep in repair, under the charter, the whole; with this valuable part the corporate property may be kept in serviceable condition, and operated without dividends, until a change of times, increases in population, more rigid economy, or wiser management, makes the whole remunerative; take away this productive part, and the corporation is at once hopelessly bankrupt. Common observation has demonstrated that many corporate enterprises have become sources of large income to their stockholders by the mere ability to survive for a few years, in the absence of any net income from the property as a whole. It will be noticed that the Act of 1876 provides that when paying tolls is too burdensome to the public, the county is authorized to acquire the bridge; the argument of the learned counsel for appellant tends to the conclusion that if the property be burdensome to the owners the public should come to their relief by confiscating it. This is a misapprehension; the act is not based on a sort of guardianship of improvident owners, who persist in holding on to unproductive property, but on the idea that private property may be taken for public use when the interest of the public is thereby promoted, but when thus taken the public must pay for it in reasonable damages."

[29] Lock Haven Bridge Co. *v.* Clinton County, 157 Pa. 379 (1893).

township or townships where the same is located; fourth, the amount of damages, if any, sustained by such company or corporation by reason of the taking of the same.[30]

Action of Grand Jury on Report of Viewers.

832. If upon the report of the viewers it shall appear to the court and grand jury that such bridge ought to be declared a county bridge, and is necessary for the public accommodation, and that payment of tolls thereon is an unjust burden on the traveling public, and the people of the township or townships near where the same is located, the report shall be approved, and the damages shall be payable out of the county treasury, and the said bridge or bridges shall be taken possession of by the county commissioners, and shall thenceforth be declared a county bridge, and all tolls for travel thereon shall cease: Provided, that in case one of the viewers fail to attend at the time and place of meeting, the viewers present, if five or more in number, may view and make the report.[31]

Examination of Witnesses.

833. In their inquiry into the propriety of approving and confirming any report under this act, it shall be the duty of the court and grand jury, if requested, to hear and examine witnesses for and against the same.[32]

Bridges on the Line of Adjoining County.

834. Bridges over any river, creek, or rivulet, being on the line of adjoining counties, shall be taken in the manner provided in this act in the case of any other county bridges, except that the Court of Quarter Sessions of each county shall appoint three of the viewers, and that a report, as aforesaid, be made to the said courts respectively; and the said courts shall, together with the grand jury and commissioners of the respective counties, in all other respects, have and exercise concurrent jurisdiction and discretion therein: Provided, that the damage for the appropriation of any such bridge shall be borne by said counties equally: And provided, that this

[30] Act of May 8, 1876, Sec. 2, P. L. 131.

[31] Act of May 8, 1876, Sec. 3, P. L. 131, as amended by the Act of May 3, 1878, P. L. 41.

[32] Act of May 8, 1876, Sec. 4, P. L. 132.

act shall not be construed to repeal any law heretofore passed in relation to purchase of any particular bridge by any county.[33]

Appeals.

835. That the company owning any such bridge as mentioned in said act, or the county, shall have the right to appeal from any award of damages, made under the provisions thereof to the Court of Common Pleas in which such bridge or part thereof is situated, under such regulations for bringing the matter to a trial in due course of law by a jury, as the said court may prescribe.[34]

That after appeal entered as aforesaid, the case shall be removed on application of either party, for trial in some other county to be determined by the court to which the appeal was taken.[35]

Rebuilding of Bridges.

836. The county commissioners of the several counties of this Commonwealth are hereby authorized to take charge of or rebuild and reconstruct any bridge, over any stream or river running into or through any county, owned and maintained by corporations, where the same has been destroyed by ice or otherwise within ten years and abandoned by the owners of the said bridge, or where said bridge crosses a stream forming the boundary line between two counties, then the commissioners of the county in which said bridge is located or has been located, or the commissioners of the respective counties, where the stream or river runs between the counties, are hereby authorized to jointly reconstruct and maintain such bridge as a county bridge, the costs and expenses of which joint construction and maintenance shall be paid by said counties respectively in the proportion of the population thereof as ascertained at the last census. If the said commissioners shall neglect or refuse to act as herein provided, upon the petition of ten citizens and taxpayers residing in the city, borough or township in which the bridge is or was located, which petition shall set forth fully all the

[33] Act of April 11, 1889, P. L. 29, amending the Act of May 3, 1878, Sec. 2, P. L. 42, which amended the Act of May 8, 1876, Sec. 5, P. L. 132.

[34] Act of May 3, 1878, Sec. 4, P. L. 42.

[35] Act of May 3, 1878, Sec. 5, P. L. 42.

facts supported by the affidavit of two of said citizens, to the Court of Common Pleas of the county, and said court, upon hearing, may issue a mandamus compelling said commissioners to proceed as provided by this act: Provided, that this act shall not in any way affect any bridge heretofore erected or built, or now in course of construction under the provisions of the Act of June 16, 1891, amending the first section of the Act of June 8, 1881, but all such bridges shall be maintained as though this act had not been passed.[36]

Bridges Taken by Cities.

837. Whereas, In cities of this Commonwealth, sections or districts thereof are divided and separated from each other by rivers and streams of water, rendering bridges necessary for the connection of the same in order that the inhabitants may have access to each part.

And whereas, many of such bridges have been erected, and are operated by private corporations, and the tolls thereon have become burdensome to the people, and it is desirable such cities should have the ownership of and control of such bridges to make the same free for the people, therefore,

Section 1. Be it enacted, etc., that whenever any city of this Commonwealth shall be divided or separated in any of its territorial sections or parts by intervening rivers or streams of water it shall be lawful, and the right is given to such city or cities, to purchase, enter upon, take, use, hold, and appropriate such bridge or bridges, together with the approaches and appurtenances thereto, lying within the corporate limits of such cities as shall have been erected and now in use over such rivers or streams of water so dividing and separating the sections or parts aforesaid. Whenever the councils of such cities shall determine upon the purchase, appropriation or condemnation of such bridge or bridges, approaches and appurtenances, it shall be so expressed by ordinance, or joint resolution of such councils.[37]

City Shall Tender Bond if Compensation Cannot be Agreed Upon.

838. If the compensation to be paid for such bridge cannot

[36] Act of April 19, 1895, Sec. 1, P. L. 38. See Commonwealth *v.* Pittston Ferry Bridge Co., 148 Pa. 621 (1892).

[37] Act of May 20, 1893, Sec. 1, P. L. 154.

be agreed upon between the owners thereof and such cities it shall be lawful for such city, or cities, to tender the bond thereof as security to the person, firm, or corporation claiming or entitled to compensation, or to the attorney or agent of any absent person, or to the agent or officers of a corporation, or to the guardian or committee of any one under legal incapacity, the conditions of which shall be that the said city shall pay or cause to be paid such amount of damages or compensation as the person, firm, or corporation, as the case may be, shall be entitled to receive after the same shall be agreed upon or assessed in the manner provided in this act; in case the party or parties claiming damages or compensation refuse or do not accept the security so tendered, such city shall then give the party, his or their agent, attorney, guardian, or committee, written notice of the time when the same will be presented in the court for approval, and thereafter the said city may present said security to any Court of Common Pleas of the county wherein such bridges are located and used, and when approved the said security shall be filed in said court for the benefit of those interested, and recovery may be had thereon for the amount of damages or compensation assessed, if the same be not paid, or cannot be made by execution on the judgment in the issue formed to try the question, and upon the approval of said security, said city may enter upon, appropriate, take, hold, use, and control such bridge or bridges.[88]

When Viewers Shall be Appointed.

839. In case the compensation for damages accruing from such appropriation, taking, holding, and using have not been agreed upon, any Court of Common Pleas of the proper county, or any law judge thereof in vacation, on application thereto by said city or any person interested, shall appoint three discreet and disinterested freeholders as viewers, and appoint a time not less than ten nor more than twenty days thereafter, when said viewers shall meet and view the said bridges. The said viewers shall give at least ten days' notice in writing of the time of their first meeting to the owners, agents, officers, attorneys, or representatives of the persons interested, or such other notice as the court may direct.

The said viewers, having been first duly sworn or affirmed

[88] Act of May 20, 1893, Sec. 2, P. L. 154.

faithfully, justly, and impartially, to decide and true report to make concerning all matters and things to be submitted to them, and in relation to which they are authorized to inquire under the provisions of this act, and having viewed the property and structure, shall hear all parties interested and their witnesses, and shall estimate and determine the damages for the property so taken, appropriated, held, and used, to whom the same are payable; they shall give at least ten days' notice thereof, in the manner herein provided, to all parties interested of the time and place when said viewers will meet and exhibit said report, and hear all exceptions thereto.

After making whatever changes are deemed right and proper, the said viewers, or any two of them, shall make report to the court, showing the amount of damages or compensation allowed, and to whom payable, and shall file therewith a plan showing the location of said bridge or bridges, so taken and appropriated.[39]

Exceptions to Report.

840. Upon the report of said viewers, or any two of them, being filed in said court, any party interested may, within thirty days thereafter, file exceptions to the same, and the said court shall have power to confirm said report, or to modify, change, or otherwise correct the same, or refer the same back to the same or new viewers, with like power as to their report. Or within thirty days from the filing of such report in court any party interested may appeal and demand a trial by jury, and any party so interested may, within thirty days after final decree, have an appeal to the Supreme Court. If no exceptions are filed, or no demand made for trial by jury within said thirty days after the filing of said report, the same shall become absolute.

The said Court of Common Pleas shall have power to order what notices shall be given in connection with any part of said proceedings, and may make all such orders as it may deem requisite.[40]

Oaths—Costs.

841. The viewers provided for in the foregoing sections may be appointed before, or at any time after, the entry upon,

[39] Act of May 20, 1893, Sec. 3, P. L. 154.
[40] Act of May 20, 1893, Sec. 4, P. L. 154.

taking, and appropriating of such property. They shall have power to administer oaths or affirmations to all parties and witnesses.

The costs of the viewers and all court costs incurred in the proceedings aforesaid shall be defrayed by said city, and each of the said viewers shall be entitled to a sum not exceeding five dollars per day for every day necessarily employed in performance of the duties herein described.[41]

[41] Act of May 20, 1893, Sec. 5, P. L. 154.

CHAPTER LXI.

FRATERNAL AND BENEFICIAL ASSOCIATIONS.

842. Incorporation.
843. Limitation Upon Amount of Benefits.
844. Definition and Powers of Fraternal and Beneficial Societies.
845. Copy of Constitution and By-Laws to be Filed with Insurance Commissioner.
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Incorporation.

842. [Corporations may be formed for] the maintenance of a society for beneficial or protective purposes to its members from funds collected therein.[1]

Limitation Upon Amount of Benefits.

843. It shall be lawful for any corporation incorporated under the provisions of the ninth paragraph of Section 2 of an act entitled "An act to provide for the incorporation and

[1] Act of April 29, 1874, Sec. 2, P. L. 73. See Act of April, 1893, P. L. 10. The Act of July 15, 1897, Sec. 2, P. L. 283, provides for the incorporation of companies "for receiving and holding property, real and personal, of and for unincorporated religious, beneficial, charitable, educational, and missionary societies and associations, and executing trusts thereof."

regulation of certain corporations," approved April 29, 1874, namely, "The maintenance of a society for beneficial or protective purposes to its members from funds collected therein," to pay, and to enter into contracts to pay, to each member thereof, money or benefits not exceeding ten dollars per week in the event of sickness, accident, or disability, or to pay not exceeding the sum of two hundred and fifty dollars in the event of death, or to pay money or benefits in the event of any or all of such contingencies: Provided, that the provisions of this act shall not apply to fraternal, benevolent, charitable, or secret societies issuing beneficiary certificates, or paying benefits to their membership through the lodge system, or to insurance or relief associations formed by or for the exclusive benefit of employees of corporations or firms, or formed by or for the exclusive benefit of members of any religious corporation or association, but shall only apply to companies employing agents and doing a general public insurance business.[2]

Definition and Powers of Fraternal and Beneficial Societies.

844. It shall be lawful for any corporation, society, or voluntary association now or hereafter formed or organized, and carried on for the sole benefit of its members and their beneficiaries, and not for profit, to have and create subordinate lodges with ritualistic form of work and a representative form of government, and to issue certificates of membership, make provision for the payment of benefits in case of sickness, disability, or death of its members, subject to their compliance with its constitution and laws, in which the fund from which the payment of such benefits shall be made, and the expenses of such association shall be defrayed and shall be derived from assessments or dues collected from its members, and in which the payment of death benefits shall be to families, heirs, blood relatives, affianced husband, or affianced wife, of or to persons dependent upon the member.

Such corporation, society, or voluntary association now existing, or hereafter formed or organized, shall be and is hereby declared to be a fraternal beneficial society, and shall be governed by this act, and shall be exempt from the provisions of insurance laws of this State, and no law hereafter passed shall be applied to them unless they be expressly desig-

[2] Act of May 23, 1891, Sec. 1, P. L. 107.

nated therein. All funds of such fraternal beneficial societies shall be exempt from the State tax on money at interest.[3]

Copy of Constitution and By-Laws to be Filed with Insurance Commissioner.

845. Within sixty days after the passage of this act all supreme, or grand, or other bodies which may be known to constitute the head of any fraternal beneficial society doing business within this Commonwealth, as provided in the first section of this act, shall file through its proper officers or representatives with the insurance commissioner a copy of their constitution and general laws, and annually any alterations, changes, or amendments, whose duty it shall be to register them without charge in the insurance department as fraternal beneficial societies, and when so registered they shall be exempt from any and all fees and taxes imposed by existing laws upon insurance companies reporting to said department.[4]

Annual Report to Insurance Commissioner.

846. The executive officers of each such supreme or grand lodge of any fraternal beneficial society doing business in this Commonwealth shall, on or before the first day of March of each year, make a report under oath on a blank to be provided by the insurance commissioner, which report shall be printed as a part of his annual report of the operations of said society in this Commonwealth for the preceding fiscal year ending December 31, in form as follows:

I. Name of the society or association, with its principal office or place of business.

II. *Income.*—First, annual dues; second, assessments; third, all other sources; fourth, total income during the year.

III. *Expenditures.*—First, losses and claims paid; second, salary and other compensation of officers; third, rent; fourth, office expenses; fifth, all other expenditures.

IV. *Assets.*—First, real estate; second, loans and mortgages; third, bonds and stock owned absolutely; fourth, cash in office or bank; fifth, due from members on assessments called or pending collection; sixth, all other assets (stating character).

V. *Liabilities.*—First, losses and claims unpaid; second,

[3] Act of April 6, 1893, Sec. 1, P. L. 7.

[4] Act of April 6, 1893, Sec. 2, P. L. 7.

salaries due and unpaid; third, borrowed money; fourth, all other liabilities (stating character).

VI. *Exhibit of Membership.*—First, total members in good standing December 31st, one thousand ——— hundred and ———, number; second, total number of members received by initiation or readmission during the year, number; third, total, number; fourth, deduct members retiring by withdrawal or suspension during the year, number; fifth, deduct members who have died during the year, number; sixth, total members in good standing December 31st, one thousand ——— hundred and ———, number.[5]

Penalty for Failure to Register or Make Report.

847. Any fraternal beneficial society failing to register as required by the second section of this act, or to make the report required by the third section of this act, shall be prohibited from doing business in this State, and the officers of societies violating these requirements shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not exceeding one hundred dollars for each offense: Provided always, that nothing in this act shall be so construed as to give the insurance commissioner any supervision or authority in any matter or thing whatsoever pertaining to the business of any fraternal society as prescribed in the first section of this act, other than is expressly provided for in the second and third sections hereof.[6]

Certain Associations to be Exempt from Provisions of this Act.

848. All beneficial and relief associations formed by churches, societies, classes, firms, or corporations with or without ritualistic form of work, the privileges and membership in which are confined to the members of such churches, societies, or classes, and to the members and employees of such firms or corporations, shall be exempt from the provisions of this act: And provided further, that this act shall not apply to any secret fraternal beneficial society, order, or association, which has for one of its objects the payment of a sum not exceeding a certain amount at the expiration of a fixed period.[7]

[5] Act of April 6, 1893, Sec. 3, P. L. 7.
[6] Act of April 6, 1893, Sec. 4, P. L. 7.
[7] Act of April 6, 1893, Sec. 4, P. L. 7.

Incorporation and Powers of Secret Fraternal Beneficial Societies.

849. From and after the passage of this act any fifteen or more persons, nine of whom shall be citizens and residents of this Commonwealth, having associated themselves as a secret fraternal beneficial society, order, or association, may be incorporated under the provisions of this act, and when so incorporated the said corporation shall have the following powers:

GENERAL POWERS.

I. To have succession by its corporate name perpetually, subject to the power of the General Assembly under the Constitution of this Commonwealth.

II. To maintain and defend judicial proceedings.

III. To make and use a common seal and alter the same at pleasure.

IV. To be capable of taking, receiving, purchasing, holding, transferring real and personal property for the purpose of its incorporation, and for no other purpose.

V. To elect, appoint, and remove the officers and agents for the management of its business and carrying out its objects, and to allow them a suitable compensation.

VI. To make a constitution and general laws for the management of its affairs, not inconsistent with the constitution and laws of this State, and to alter and amend the same when necessary. When so made, altered or amended, the said constitution and general laws shall be the law governing such society, order or association and its officers, subordinate lodges, councils or bodies, and the members in their relations to such society, order or association in all their acts.

VII. To provide in the constitution and general laws for the payment to its members of sick, disability or death claims in such amounts as may be authorized and directed by said constitution and general laws. And also to provide for the payment in not less than five years, to members whose beneficiary or distribution period may then expire, of such sum not exceeding the maximum amount named in the beneficiary certificates as the constitution and general laws in force at the expiration of said period may authorize and direct.

VIII. To collect from its members by admission fees, dues and assessments, the funds necessary to carry on its opera-

tions and provide for the payment of its benefits, which assessments shall be made in manner and form as provided by its constitution and general laws.

IX. To carry on its operations through supreme and subordinate bodies or lodges and to issue beneficiary or relief certificates in accordance with its constitution and general laws.

X. To enter into any obligation necessary for the transaction of its affairs.[8]

Requisites of Charter.

850. The charter of such intended corporation must be subscribed by five or more persons, citizens of this Commonwealth, and shall set forth :

I. The name of the corporation.

II. The purpose for which it is formed.

III. The place where its principal office is to be located.

IV. The names and residences of the subscribers.

V. The number and names of its officers with the term or terms of years for which they have been chosen, and also the names of not less than six directors, managers or members of an executive committee, who, together with the president of the society, order or association, shall form a board of directors, managers or executive committee, with the term or terms of years for which each is to serve.[9]

Publication of Notice.

851. Notice of the intention to apply for any such charter shall be inserted in two newspapers of general circulation printed in the proper county for three weeks, setting forth briefly the character and object of the corporation to be formed and the intention to make application therefor.[10]

Certificate of Incorporation.

852. The said certificates of incorporation shall be acknowledged by at least five of those who subscribed to them, before any officer authorized to take the acknowledgment of deeds in the Commonwealth of Pennsylvania, to be their

[8] Act of April 6, 1893, Sec. 1, P. L. 10. See Act of April 6, 1893, P. L. 7, authorizing beneficial associations to establish subordinate lodges.

[9] Act of April 6, 1893, Sec. 3, P. L. 10.

[10] Act of April 6, 1893, Sec. 3, P. L. 10.

act and deed, and the same being duly certified under the hand and official seal of the said officer shall be presented to a law judge of the county in which the principal office of the corporation is located, accompanied by proof of the publication of the notice of such application, who is hereby authorized to peruse and examine said instrument, and if the same shall be found to be in the proper form and within the purposes named in this act, he shall indorse thereon these facts, and shall order and decree thereon that the charter is approved and that upon the recording of the said charter and order the subscribers thereto and their associates shall be a corporation for the purposes and upon the terms therein stated, and said order and charter shall be recorded in the office for the recording of deeds in and for the county aforesaid, and from thenceforth the persons named therein and subscribing the same and their associates and successors shall be a corporation by the name therein given. No such corporation, however, shall engage in business until at least twenty-five persons have subscribed in writing to be beneficiary members therein in the aggregate amount of at least five thousand dollars, and have each paid in one full assessment in cash amounting in the aggregate to at least one per centum of the amount in which they are beneficiary, nor until a certificate signed and sworn to by three of the highest officers of the corporation has been filed with the insurance commissioners stating that the requirements of this section have been complied with.[11]

Annual Report to be Filed with Insurance Commissioner.

853. Every such fraternal society, order or association incorporated under or accepting the provisions of this act shall, on or before the first day of March of each year, make and file with the insurance commissioner a report of its affairs and operations during the year ending on the thirty-first day of December immediately preceding; such report shall be upon blank forms to be provided by the insurance commissioner, and shall be verified under oath by the duly authorized officers of such society, order or association, and shall be in lieu of all other reports required by any other law ; the said report shall contain answers to the following questions :

[11] Act of April 6, 1893, Sec. 4, P. L. 10.

I. Number of members admitted during the year and number of beneficiary certificates issued.

II. Amount of benefits named in said certificates.

III. Number of benefit liabilities incurred during the year.

IV. Number of benefit liabilities paid during the year.

V. The amount received from each assessment during the year and the number of assessments levied.

VI. Total amount paid members, beneficiaries, legal representatives, or heirs.

VII. Number and kinds of claims compromised or resisted, and brief statement of reasons.

VIII. Does the corporation charge annual or other periodical dues or admission fees?

IX. Total amount of salaries paid to officers.

X. Has the society a reserve fund?

XI. If so, how is it created, and for what purpose, the amount thereof, and how invested?

XII. If the custody and investment of said reserve fund is intrusted to any trust companies or corporations in the Commonwealth of Pennsylvania, state the name of said corporation or corporations, the capital stock of the same, the amount of capital stock paid in, the surplus, if any, and the place of business of said corporation or corporations.

XIII. If the custody and investment of said reserve fund is intrusted to any of the officers of the said secret fraternal beneficial society, give the names and residences of the said officers, the names and residences of their sureties, the amount of their bonds, and the place or person with whom the said bonds are deposited.

XIV. State the amount of said reserve fund.

XV. Number of certificates of membership lapsed during the year.

XVI. Number in force at beginning and end of year.

XVII. Date of organization and incorporation, and county where incorporated.

All such societies, orders, or associations, together with their books, papers and vouchers, shall be subject to visitation and inspection by the insurance commissioner, or such person or persons as he may at any time designate. Any such society, order, or association refusing or neglecting to make such report to the insurance commissioner, may, upon the suit of the Commonwealth, be enjoined by the Court

of Common Pleas of Dauphin county from carrying on any business until such report shall be made.[12]

Officers to Give Bond.

854. Every officer of any corporation accepting the provisions of or doing business under this act, shall give bond with sufficient surety for the faithful performance of his duties, and for the safe custody of the moneys and securities, and other property which may be in his possession and control, which bond shall be for such amount as the board of directors, managers, executive committee, or supreme governing body may require: Provided however, that when the reserve funds of any corporation organized hereunder or accepting the provisions hereof, are deposited for investment with any trust companies or financial corporations, chartered by the Commonwealth of Pennsylvania, the officers of said corporation so depositing its reserve funds need not be bonded for any of the moneys or securities in the custody or possession of said trust companies or financial corporations. The insurance commissioner shall have the power and authority at all times to examine said bonds at the place of business of the corporation, and there to inquire of and receive answers from the officers of the corporation as to their knowledge of the financial standing of the surety or sureties on any of said bonds.[13]

Societies Heretofore Incorporated may File Acceptance of this Act.

855. Any beneficial society, order, or association heretofore incorporated under any Act of the General Assembly of the Commonwealth of Pennsylvania for beneficial or protective purposes to its members from funds collected therein, and which has been carrying on the operations of a secret fraternal society, order, or association, and any unincorporated society, order, or association which has been carrying on said operations, shall have and enjoy the rights and privileges conferred by this act, upon filing with the insurance commissioner a certificate or declaration signed by its supreme officers accepting the provisions of this act, and agreeing to abide by all the requirements herein made: Provided,

[12] Act of April 6, 1893, Sec. 5, P. L. 10.
[13] Act of April 6, 1893, Sec. 6, P. L. 10.

however, that nothing in this act shall apply to any incorporated or unincorporated fraternal beneficial society not accepting the provisions hereof, or be so construed as to compel any such society to accept its provisions or become incorporated thereunder.[14]

Membership of Minors.

856. From and after the passage of this act it shall be lawful for minors, who have attained the age of eighteen years, to make all needful contracts to become members of fraternal and beneficial societies, lawfully organized and doing business under the laws of this Commonwealth.[15]

Appointment of Attorney by Foreign Associations.

857. Any fraternal, beneficial, or relief society, as defined under the provisions of the first section of the Act of Assembly, entitled "An act defining fraternal, beneficial, and relief societies and their status, authorizing them to create subordinate lodges and to pay benefits, upon the sickness, disability or death of their members, from funds collected by dues and assessments therein, providing for their registration in the office of the insurance commissioner, and requiring that they shall make annual reports to him, and exempting them from taxation and from the supervision of the insurance commissioner," approved April 6, A. D. 1893, now doing, or hereafter admitted to do, business within this State, and not having its principal office within this State, and not being organized under the laws of this State, shall appoint, in writing, the commissioner of insurance or his successor in office to be its true and lawful attorney, upon whom all lawful process in any action or proceeding against it may be served, and in such writing shall agree that any lawful process against it, which is served on said attorney, shall be of the same legal force and validity as if served upon the association, and that the authority shall continue in force so long as any liability remains outstanding in this State; copies of such certificates certified by said commissioner of insurance shall be deemed sufficient evidence thereof, and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service upon

[14] Act of April 6, 1893, Sec. 7, P. L. 10.
[15] Act of June 24, 1897, P. L. 204.

such attorney shall be deemed sufficient service upon such association. When legal process against any such association is served upon said commissioner of insurance he shall immediately notify the association of such service, by letter prepaid and directed to its supreme secretary or corresponding officer, and shall, within two days after such service, forward in the same manner a copy of the process served on him to such officer: Provided, however, that such process shall be served at least thirty days prior to the return-day of the same. The plaintiff in such process so served shall pay to the commissioner of insurance at the time of such service a fee of three dollars, which shall be recovered by him as part of the taxable costs if he prevails in the suit. The commissioner of insurance shall keep a record of all processes served upon him, which record shall show the day and hour when such service was made.[16]

When Attorney Must be Appointed.

858. All societies mentioned in the first section of this act now doing business within this State shall comply with the provisions of this act within thirty days from the passage of the same, and all such societies hereafter applying for authority to do business in this State shall comply with its provisions as a condition precedent to doing business in the State.[17]

[16] Act of June 25, 1895, Sec. 1, P. L. 280.
[17] Act of June 25, 1895, Sec. 2, P. L. 281.

CHAPTER LXII.

IRON, STEEL, METAL, AND WOOD COMPANIES.

859. Incorporation.
860. General Powers.
861. May Issue Bonds.
862. Annual Statement and Reports.
863. Appropriation of Streams.
864. Construction of Grant.
865. Other Corporations may Hold Stock and Bonds or Guarantee Payment.
866. Citizenship of Corporators and Officers—Place of Business.
867. Liability of Stockholders.
868. Repeal.

Incorporation.

859. [Corporations may be incorporated for] the manufacture of iron or steel, or both, or of any other metal, or of any article of commerce from metal, or wood, or both.[1]

General Powers.

860. Companies incorporated under the provisions of this act for the manufacture of iron or steel, or both, of any other metal, or of any article of commerce from wood or metal, or both, unless otherwise provided by this act, shall, from the date of letters-patent creating the same, have the powers and be governed, managed, and controlled as follows: Every such corporation may, in the manner prescribed in this act, increase its capital stock to an amount not exceeding five million dollars, and shall have the right to purchase, lease, hold, mortgage, and sell real estate and mineral rights, to prove and open mines, to mine and prepare for market, or for their own use and consumption, coal, iron ore, and other minerals, and to erect and construct furnaces, forges, mills, foundries, manufactories and such other improvements and

[1] Act of April 29, 1874, as amended by Act of April 17, 1876, Sec. 2, P. L. 31. See Chapter XLIV, Foreign Corporations.

erections as they may deem necessary, and to manufacture iron and steel, or any other metal, or either thereof, in all shapes and forms, and either of these metals, exclusively or in combination with other metals, or with wood, and to transport all of said articles or any of them to market, and to dispose of the same, and do all such other acts and things as a successful and convenient prosecution of said business may require: Provided, they shall not at any one time have more than ten thousand acres of land within this Commonwealth, including leased lands, except companies organized to manufacture iron with charcoal, which said companies may hold timber lands not exceeding the quantity that will be required to furnish wood for charcoal for the purposes of said companies, and said lands may be located in not exceeding four contiguous counties.[2]

May Issue Bonds.

861. Every such corporation may make and issue bonds, with or without coupons attached, bearing interest not exceeding six per centum per annum, and sell, exchange or otherwise dispose of the same, upon such terms and conditions as they may deem advisable, and such bonds, and the interest thereon, may be secured by a mortgage or mortgages upon the corporate franchises, real and leasehold estate: Provided, they shall not issue bonds for a greater sum than three times the amount of their capital stock paid in.[3]

Annual Statement and Reports.

862. The president and directors of every such corporation shall annually lay before the stockholders a full and complete statement of the business and affairs of the corporation for the preceding year ; and it shall also be their duty to make report to the auditor-general, at such time and in such form as is or may be prescribed by law, of the operations of the corporation, to the end that he may ascertain the amount of tax due by said corporation to the Commonwealth, and such report shall be verified by the oaths or affirmations of the president and treasurer of such corporation ; and any such

[2] Act of April 29, 1874, Sec. 38, Cl. 1, P. L. 99, as amended by the Act of May 24, 1887, P. L. 188.

[3] Act of April 29, 1874, Sec. 38, Cl. 2, P. L. 99.

corporation which shall neglect or refuse to report to the auditor-general, according to law, shall be liable to a penalty of five hundred dollars for the use of the Commonwealth, to be sued for and recovered as debts of like amount are or may be by law recoverable.[4]

Appropriation of Streams.

863. It shall and may be lawful for any corporation organized for the purposes named in this section, to appropriate any stream or streams, spring or springs, flowing through or along, or rising upon any lands belonging to and owned by such corporation in the vicinity of their works, for the purpose of supplying the same with stream or water power, upon the said corporation filing in the office of the prothonotary of the Court of Common Pleas of the county in which such works may be located, a draft or drafts showing the stream or streams, spring or springs, which may have been appropriated for the purposes aforesaid ; whereupon it shall not be lawful for any other corporation or individual to divert or use the water of any stream or streams, spring or springs, thus appropriated, so as to diminish the usual accustomed and natural flow thereof: Provided, that every corporation thus appropriating any stream or streams, spring or springs, shall, after using the waters of the same for their manufacturing necessities, return the same into the usual and accustomed channel whereby the water of such stream or streams, spring or springs, have [*has*] heretofore been accustomed to flow off or along the lands of such corporation.[5]

Construction of Grant.

864. The incorporation of any association of persons for the purposes named in this section shall be held and taken to be of the same force and effect as if the powers and privileges conferred and the duties enjoined had been conferred and enjoined by special act of the legislature, and the franchises granted shall be construed according to the same rules of law and equity as if it had been created by special charter, and no

[4] Act of April 29, 1874, Sec. 38, Cl. 3, P. L. 99.

[5] Act of April 29, 1874, Sec. 38, Cl. 4, P. L. 99. "In the pamphlet laws the fourth, fifth, and sixth lines are misplaced, the above is evidently the correct reading:" Freedley's Corporation Laws of Pennsylvania, page 109.

modification or repeal of this act shall affect any franchise obtained under the provisions of the same.[6]

Other Corporations may Hold Stock and Bonds or Guarantee Payment.

865. It shall and may be lawful for any incorporated company of this Commonwealth, or elsewhere, to subscribe for and take shares of stock in any company incorporated for the purposes named in said Section 38 of the said corporation act of one thousand eight hundred and seventy-four, or to purchase the bonds or stock of such company or guarantee the payment of said bonds and the interest thereon, or either principal or interest ; and it shall and may be lawful for any manufacturing company of this Commonwealth incorporated for the purpose named in said Section 38 of the said corporation act of one thousand eight hundred and seventy-four to subscribe for, purchase, hold and dispose of bonds or stocks in any incorporated company of this Commonwealth, or elsewhere, or to guarantee the payment of such bonds and the interest thereon, or either principal or interest: Provided, that this act shall not be construed to permit any corporation named herein to hold a majority of the stock of any railroad company or other common carrier of this Commonwealth, or elsewhere, to subscribe and take shares of stock in any company incorporated for the purposes named in this section of this act, or to purchase the bonds or stock, or to guarantee the payment of said bonds and the interest thereon, or either principal or interest.[7]

Citizenship of Corporators and Officers—Place of Business.

866. A majority of the stock of any such corporation may be held by persons who are not citizens of this State or of the United States. A majority of its directors may be citizens of another State, or of any foreign country ; and it may have an office at any place without the State, at which the by-laws of the corporation may authorize the same [where] meetings of stockholders and directors may be held, and any business of the corporation transacted, but it shall also keep an office within the county in which its principal business in this State

[6] Act of April 29, 1874, Sec. 38, Cl. 5, P. L. 99.

[7] Act of June 17, 1887, P. L. 412, amending the Act of April 29, 1874, Section 38, Cl. 6, P. L. 99.

is transacted, and an officer of the company there upon whom service of process may be made ; and the property and stock of such corporation shall be at all times liable to taxation under the laws of this Commonwealth. Corporations for any of the purposes named in this section, heretofore created by any special or general law of this Commonwealth, on accepting the provisions of the Constitution, shall be entitled to all the privileges and powers conferred by this act upon such corporations to be hereafter created.[8]

Liability of Stockholders.

867. The stockholders of every company incorporated for the purposes named in this section shall only be individually liable for debts due to the laborers, mechanics, or clerks, for services, and in that case for no period exceeding six months.[9]

Repeal.

868. All laws and parts of laws inconsistent with this section be and the same are hereby repealed, so far as they may relate to or affect any company incorporated under the provisions hereof, or the stockholders of any such company : Provided, this shall not apply to laws imposing taxes upon such corporations.[10]

[8] Act of April 29, 1874, Sec. 38, Cl. 7, P. L. 99.
[9] Act of April 29, 1874, Sec. 38, Cl. 8, P. L. 99.
[10] Act of April 29, 1874, Sec. 38, Cl. 9, P. L. 99.

CHAPTER LXIII.

INCORPORATED ACADEMIES.

869. Trustees Authorized to Appoint Corporators.
870. Trustees, How Elected.
871. Quorum.
872. Officers of Board of Trustees.

Trustees Authorized to Appoint Corporators.

869. The board of trustees of any academy chartered by an Act of Assembly of this Commonwealth, whose trustees are now chosen by the votes of the qualified electors of a county or part of a county in which such academy is located, be, and they are hereby authorized to select and appoint thirty qualified voters of said county as corporators of such academy, who shall, within twenty days after their appointment, meet and organize as a board of corporators of such academy by the election of a president and secretary, who shall hold their respective offices until the next annual meeting of said board, which shall be on the second Monday of January next after the passage of this act, and on the second Monday of January in each year thereafter; and any vacancy that may happen in such board shall be filled at the next annual meeting of said board, or at a meeting called for that purpose.[1]

Trustees, How Elected.

870. The board of corporators, when thus organized, shall elect from the members of the board nine trustees of such academy, who shall serve until the second Monday of January next after the passage of this act, and on said second Monday of January they shall elect three trustees to serve for one year, three to serve for two years, and three to serve

[1] Act of May 16, 1895, Sec. 1, P. L. 83.

for three years, and annually thereafter they shall elect three trustees to serve for three years; and any vacancy that may happen in said board of trustees by death, removal from the county, or otherwise, shall be filled from the members of said board of corporators at the next regular meeting, or at a meeting called for that purpose, to serve until the next regular meeting.[2]

Quorum.

871. A majority of the board of corporators and of the board of trustees shall constitute a quorum of each board.[3]

Officers of Board of Trustees.

872. The officers of said board of trustees shall be a president, a secretary, and a treasurer, each to serve for one year, but the same person may be both secretary and treasurer; and the management and control of the property and funds of such academy, and the duties and responsibilities of said trustees shall be the same as is provided in the charter of such academy.[4]

[2] Act of May 16, 1895, Sec. 2, P. L. 83.
[3] Act of May 16, 1895, Sec. 3, P. L. 83.
[4] Act of May 16, 1895, Sec. 4, P. L. 83.

CHAPTER LXIV.

INSTITUTIONS OF LEARNING.

873. Powers.
874. Certificate.
875. Publication of Notice.
876. Certificate Shall be Acknowledged.
877. Application Must be Passed on by College and University Council.
878. Assets—Faculty—Degrees.
879. When Council Shall Consider Applications.
880. Majority of Council Necessary to Decide.
881. Meetings of Council.
882. Amendments to Charters of Institutions Already Incorporated.
883. College Heretofore Incorporated Must Have Funds Invested Amounting to $100,000.

Powers.

873. All institutions of learning hereafter to be incorporated as colleges, universities, or theological seminaries, with power to confer degrees in art, pure and applied science, philosophy, literature, law, medicine, and theology, or any of them, shall be incorporated in the manner hereinafter set forth, with general power as follows:

First. To have succession by their corporate names for the period limited by their charters, and when no period is limited thereby, or by this act, perpetually, subject to the power of the General Assembly, under the Constitution of this Commonwealth.

Second.—To maintain and defend judicial proceedings.

Third.—To make and use a common seal and alter the same at pleasure.

Fourth.—To hold, purchase, and transfer such real and personal property as the purposes of the corporation require, not exceeding the amount limited by its charter or by-law.

Fifth.—To appoint and remove such subordinate officers

and agents as the business of the corporation requires, and to allow them suitable compensation.

Sixth.—To make by-laws, not inconsistent with law, for the management of their property and the regulation of its affairs.

Seventh.—To enter into any obligation necessary to the transaction of their ordinary affairs.[1]

Certificate.

874. Whenever five or more persons, three of whom at least are citizens of this Commonwealth, shall voluntarily associate themselves together for the purpose of obtaining a charter of incorporation as a college, university, or theological seminary, with power to confer degrees as aforesaid, they shall prepare a certificate of such intended incorporation, which shall set forth:

I. The name of the corporation.

II. The purpose for which it is formed.

III. The place or places where its business is to be transacted.

IV. The term for which it is to exist.

V. The names and residences of the subscribers.

VI. The number of its directors, trustees, or managers, and the places of residence of those who are chosen as such for the first year.

VII. The amount of assets in the possession of said subscribers which are to be devoted to the purpose of establishing and conducting said college or university.

VIII. The minimum number of persons whom it is intended to regularly employ as members of the faculty of said corporation.

IX. A brief statement of the requirements for admission, and of the course of study to be pursued in said institution.[2]

Publication of Notice.

875. Notice of the intention to apply for any such charter shall be inserted in two newspapers of general circulation, printed in the proper county, for three weeks, setting forth briefly the character and object of the corporation to be formed, and the intention to make application therefor.[3]

[1] Act of June 26, 1895, Sec. 1, P. L. 327.
[2] Act of June 26, 1895, Sec. 2, P. L. 327.
[3] Act of June 26, 1895, Sec. 3, P. L. 327.

Certificate Shall be Acknowledged.

876. The said certificate of incorporation shall be acknowledged by at least three of said subscribers, and before the recorder of deeds, et cetera, of the county in which the business of the corporation is to be transacted, to be their act and deed, and for the purposes therein contained, and the same having been duly certified under the hand and official seal of said recorder of deeds, et cetera, shall be presented to any law judge of a Court of Common Pleas of said county, accompanied by the proof of publication of the notice of such application, who is hereby required to peruse and examine said instruments, and, if the same be found to be in proper form, and within the purposes of this act, and shall appear lawful and not injurious to the community, he shall indorse thereon these facts, and shall thereupon direct the prothonotary or clerk of said court to transmit to the superintendent of public instruction of the Commonwealth a certified copy of said certificate of incorporation, together with the said indorsements thereon.[4]

Application Must be Passed on by College and University Council.

877. No charter for such incorporation, with power to confer degrees as aforesaid, shall be granted until the merits of the application, from an educational standpoint, shall be passed upon by a board to be styled the "college and university council," which shall consist of twelve members, namely, the governor, the attorney-general, and the superintendent of public instruction, who shall be members ex-officio, three persons selected from the presiding officers of undenominational colleges or universities of this Commonwealth, three persons selected from the presiding officers of denominational colleges or universities of this Commonwealth, and three persons holding official relationship to common schools of the State. Those who are not ex-officio members shall be appointed by the governor, with the advice and consent of the senate, for a term of four years.[5]

Assets—Faculty—Degrees.

878. No institution shall be chartered with the power to

[4] Act of June 26, 1895, Sec. 4, P. L. 327.
[5] Act of June 26, 1895, Sec. 5, P. L. 327.

confer degrees, unless it has assets amounting to five hundred thousand dollars invested in buildings, apparatus and endowments for the exclusive purpose of promoting instruction, and unless the faculty consists of at least six regular professors who devote all their time to the instruction of its college or university classes, nor shall any baccalaureate degree in art, philosophy, or literature be conferred upon any student who has not completed a college or university course covering four years. The standard of admission to these four-year courses, or to advanced classes in these courses, shall be subject to the approval of the said council.[6]

When Council Shall Consider Application.

879. Upon the receipt of said certified copy of certificate of incorporation, as directed in Section 4 of this act, the said superintendent of public instruction shall, within sixty days thereafter, cause said "college and university council" to be convened at such time and place as he may designate, and said council shall thereupon hear and consider said application, and if the course of instruction and standard of admission to said institution, and the composition of the faculty shall appear to said council to be sufficient, and the educational needs of the particular locality in which the proposed institution is to be situated and of the Commonwealth at large are likely to be met by the granting of said application, the said council shall thereupon cause to be indorsed on said application or certificate its findings and its approval of the same, together with a recommendation to the law judge or court before whom the same was originally presented that the same be granted. If, in the judgment of the council, the said application should not be granted, it shall indorse thereon its findings, and its disapproval of the same with a recommendation that said application be refused. The said certified copy of said certificate shall, with the indorsements thereon, thereupon be returned to the said law judge or court, who, in finally passing upon the application, shall be guided in his decree by the finding of the college and university council. In case the law judge, after giving his consideration to the findings of said council, shall be satisfied with the propriety of the application in view of all the facts, he shall approve the same and order and decree that, upon

[6] Act of June 26, 1895, Sec. 6, P. L. 327.

the recording of said certificate with the recommendation of said council and a copy of said order of court in the recorder's office aforesaid, the subscribers thereto and their associates and successors shall be a corporation for the purpose and upon the terms therein stated, and thenceforth the persons named herein and subscribing the same, and their associates and successors shall be a corporation by the name therein given. In case of the disapproval of said application by the council aforesaid the proposed charter shall not be granted.[7]

Majority of Council Necessary to Decide.

880. In the transaction of business of said "college and university council" the concurrence of a majority of the members thereof shall be required.[8]

All institutions chartered under this act shall be subject to visitation and inspection by representatives of the council, and if any one of them shall fail to keep up the required standard the court shall, upon the recommendation of the council, revoke the power to confer degrees.[9]

Meetings of Council.

881. The council shall meet regularly on the first Tuesday of October preceding the biennial session of the legislature, and shall submit to that body a biennial report upon higher education in Pennsylvania; said report to be printed in connection with the report of the superintendent of public instruction.[10]

Amendments to Charters of Institutions Already Incorporated.

882. Any college, university, or theological seminary, heretofore incorporated under the laws of this Commonwealth, may apply to any law judge of any Court of Common Pleas of the county in which the business of such corporation is transacted for amendments to its charter, enabling it to confer degrees in like manner as institutions originally incorporated under this act, and in the application therefor it shall follow the requirements of this act in respect of applications for original charters or incorporation, and the method of

[7] Act of June 26, 1895, Sec. 7, P. L. 327.
[8] Act of June 26, 1895, Sec. 8, P. L. 327.
[9] Act of June 26, 1895, Sec. 9, P. L. 327.
[10] Act of June 26, 1895, Sec. 10, P. L. 327.

procedure prescribed therefor. Such applications for amendments shall be acted upon by the same authorities, and in the same manner as provided in this act for the original incorporation of colleges, universities, and theological seminaries. No such amendment shall be granted, however, unless the institution applying therefor shall bring itself within the provisions of this act as fully as is required in the granting of original charters under this act.[11]

College Heretofore Incorporated Must Have Funds Invested Amounting to $100,000.

883. When a college or theological seminary has heretofore been incorporated by special Act of Assembly, it may obtain the power to confer degrees from the courts as above set forth, provided it has invested funds amounting to one hundred thousand dollars at the time of the passage of this act. This act furthermore shall not impair the authority of colleges heretofore incorporated by such Courts of Common Pleas with power to confer degrees in cases where such institutions have property or capital, at the time of the passage of this act, of at least one hundred thousand dollars, and which shall, within three months after the passage of this act, file with the superintendent of public instruction of this Commonwealth a sworn statement that the assets held by them individually for the purpose of promoting education in the higher branches of human learning amount to the sum of one hundred thousand dollars, nor shall this act impair the authority of universities similarly incorporated by the courts with the power to confer degrees in cases where such institutions possess property at the time of the passage of this act amounting to the sum of five hundred thousand dollars, and which shall, within three months from the passage of this act, file with the superintendent of public instruction of this Commonwealth a sworn statement that the assets held by them individually for the purpose of promoting instruction in the higher branches of human learning amount to the sum of five hundred thousand dollars; none of the provisions of this act, however, shall be construed as applying to institutions possessing capital stock, and established for purposes of private profit or gain.[12]

[11] Act of June 26, 1895, Sec. 11, P. L. 327.

[12] Act of June 26, 1895, Sec. 12, P. L. 327.

CHAPTER LXV.

INSURANCE COMPANIES.

884. Incorporation.
885. Articles of Agreement.
886. Articles to be Forwarded to Commissioners, Submitted to Attorney-General, and Certified to Governor.
887. Election of Officers—Stock Subscriptions—Applications for Insurance.
888. Payment of Capital in Joint Stock Companies.
889. Issuance of Letters-Patent to Joint Stock Companies.
890. Issuance of Letters-Patent to Mutual Companies.
891. Mutual Life, Health, and Accident Companies to Have Guaranteed Capital—Mode of Organization.
892. Articles of Association and Proceedings Thereon to be Recorded.
893. Issuance and Transfer of Certificates of Stock.
894. Capital Stock of Fire, Marine, and Inland Companies.
895. Requisite Capital of Life, Health, and Accident Companies.
896. Capital of Live Stock and Certain Other Companies.
897. Power to Make By-Laws, Etc.
898. Election of Directors—Special Elections.
899. Selection of President—Powers of Directors.

Incorporation.

884. Any ten or more persons, citizens of this Commonwealth, may associate in accordance with the provisions of this act, and form an incorporated company for any of the following purposes, to wit:

I. To make insurance, either upon the stock or mutual principle, against fire, on all kinds of buildings, merchandise, and other property, and to effect marine and inland insurance on vessels, cargoes, and freights, and on merchandise and other property in course of transportation.

II. To make insurance, either upon the stock or mutual principle, upon the lives of individuals, and every insurance

appertaining thereto or connected therewith, and to grant and purchase annuities.

III. To make insurance, either upon the stock or mutual principle, upon the health of individuals and against personal injury, disablement, or death, resulting from travel, or general accidents by land or water, or accidents resulting from the pursuit of any trade or business.

IV. To make insurance, either upon the stock or mutual principle, upon the lives of horses, cattle, and other live stock, and against loss, damage, or liability arising from any unknown or contingent event whatever, except the perils and risks enumerated in the preceding paragraphs of this section.[1]

Articles of Agreement.

885. Such persons shall associate themselves together, by articles of agreement in writing, for the purpose of forming an insurance company, which agreement shall specify the name by which the corporation shall be known, the class of insurance for the transaction of which it is constituted, the plan or principle upon which the business is to be conducted, the place in which it is to be established or located, the amount of its capital stock, if any, the general objects of the company, the proposed duration of the same, and the powers it proposes to have and exercise. Any name not previously in use in any existing company may be adopted, but such name must clearly designate the object and purposes of the company, and if a mutual company the word "mutual" must appear in the title thereof. The insurance commissioner may reject any name or title, when in his judgment it too closely resembles that of any existing company, or is likely to mislead the public.[2]

Articles to be Forwarded to Commissioner, Submitted to Attorney-General, and Certified to Governor.

886. The subscribers to said articles of agreement shall acknowledge the same before some person empowered to receive acknowledgment of deeds, and forward the same to the insurance commissioner, who shall, in case he approves of the title of the proposed company, submit said articles

[1] Act of May 1, 1876, Sec. 1, P. L. 53.
[2] Act of May 1, 1876, Sec. 2, P. L. 53.

of agreement to the attorney-general for examination, and if found by the attorney-general to be in accordance with the provisions of this act, and not inconsistent with the Constitution of this State and of the United States, he shall certify the same to the governor, with his approval indorsed thereon.[3]

Election of Officers—Stock Subscriptions—Applications for Insurance.

887. The subscriber to said articles of agreement shall choose from their number a president, a secretary, a treasurer, and such number of directors as they may deem advisable, who shall continue in office until the first annual meeting of the stockholders, or insured, as the case may be, and until their successors are duly chosen and qualified as hereinafter provided. In case a joint stock company is to be organized, they shall open books for the subscription of stock in the company at such times and places as they shall deem convenient and proper, and shall keep the same open until the full amount specified in the certificate is subscribed. In case the mutual company is to be organized for any of the purposes mentioned in the first or fourth paragraphs of the first section of this act, the subscribers to the articles of agreement shall open books to receive applications for insurance at convenient times and places, and keep the same open until applications for insurance have been obtained in sufficient number and amount to comply with the requirements of this act.[4]

Payment of Capital in Joint Stock Companies.

888. The capital stock of a joint stock company shall be divided into shares of not less than ten dollars each, payment of which shall be made in lawful money, 10 per centum on each share at the time of subscribing, and the balance at such times as the company may direct, not exceeding six months from the time of subscription; and the company may prescribe such rules with regard to forfeiture of partial payments on subscriptions as they may deem advisable, which rules shall be binding upon subscribers, provided they are made known at the time of subscription.[5]

[3] Act of May 1, 1876, Sec. 3, P. L. 53.
[4] Act of May 1, 1876, Sec. 4, P. L. 53.
[5] Act of May 1, 1876, Sec. 5, P. L. 53.

Issuance of Letters-Patent to Joint Stock Companies.

889. Whenever one-half of the capital stock mentioned in said articles of agreement shall have been subscribed, and 20 per centum on each share paid into the hands of the treasurer of the company, the president, treasurer, and a majority of the directors of said company shall, under their respective oaths or affirmations, make a certificate to the governor, stating the number and par value of the shares of stock in said company, the names and residence of the subscribers, the number of shares subscribed by each, the amount paid in on each share, and the amount of money in the hands of the treasurer on account of such payments, and where the same is deposited. Upon the receipt of such certificate the governor shall, in case he approves of the articles of agreement certified to him as hereinbefore provided, indorse his approval thereon, and cause letters-patent to issue, erecting the subscribers to said articles of agreement and their associates into a body corporate, with succession, under the name designated in said articles of agreement, but they shall not have the power to engage in the business of insurance until they have otherwise complied with the provisions of this act.[6]

Issuance of Letters-Patent to Mutual Companies.

890. Whenever applications for insurance, in the case of a mutual company mentioned in the first or fourth paragraphs of the first section of this act, have been obtained in sufficient number and amount, the president, treasurer, and a majority of the directors of said company shall, under their respective oaths or affirmation, make a certificate to the governor, stating the names and residence of the persons applying for insurance in said company, and the amount agreed to be taken by each. Upon the receipt of such certificate the governor shall, in the same manner as is provided in the preceding section of this act, erect the subscribers to the articles of agreement and their associates into a body corporate, with succession, under the name designated in said articles of agreement, with power to engage immediately in the business of mutual insurance mentioned in the articles of agreement aforesaid.[7]

[6] Act of May 1, 1876, Sec. 6, P. L. 53.
[7] Act of May 1, 1876, Sec. 7, P. L. 53.

Mutual Life, Health, and Accident Companies to Have Guaranteed Capital—Mode of Organization.

891. Companies organized for the purpose of conducting business upon the mutual principle, as mentioned in either the second or third paragraphs of the first section of this act, must have a guarantee capital before commencing business. If the purpose be to insure lives, said guarantee capital must not be less than two hundred thousand dollars, and if the purpose be to insure health and against accidents, said guarantee capital must be not less than one hundred thousand dollars, 50 per centum of which shall be paid in cash before commencing business. Said companies shall be organized by articles of agreement, as hereinbefore prescribed, and the subscribers to said articles of agreement shall open books and receive subscriptions to the guarantee capital, as provided in the case of joint stock companies. As soon as the entire amount of said guarantee capital has been subscribed, and 50 per centum thereof paid in lawful money to the treasurer, and the subscribers' obligations given for the remaining 50 per centum thereof, the president, treasurer, and a majority of the directors shall, under their respective oaths or affirmations, make a certificate to the governor, stating the number and par value of the shares of guarantee stock in said company, the names and residence of the subscribers, the number of shares subscribed by each, the amount paid in on each share, the form of obligation taken for the unpaid moiety, the amount of money in the hands of the treasurer, and where the same is deposited. Upon the receipt of said certificate the governor shall, in the same form and under the same conditions prescribed in this act for joint stock companies, erect said subscribers and their associates into a body corporate, with succession.[8]

Articles of Association and Proceedings Thereon to be Recorded.

892. The secretary of the Commonwealth shall cause the articles of association aforesaid, together with the proceedings had thereon, and the certificate to the governor, after the approval of the governor has been indorsed on said articles of association, and letters-patent have issued, to be recorded in a book [recorded in a book] kept for that purpose; and he shall return said articles of association to the com-

[8] Act of May 1, 1876, Sec. 8, P. L. 53.

pany, who shall have the same recorded in the recorder's office of the county in which said company is located; and certified copies of said records may be used in evidence for or against the company with the same effect as the original.[9]

Issuance and Transfer of Certificates of Stock.

893. As soon as the whole amount of the capital stock of a joint stock company, or 50 per centum of the guarantee capital of a mutual life or accident company, duly incorporated under this act, has been paid in, certificates shall be issued therefor to the persons entitled to the same, which certificates shall be transferable at any time upon the books of the company; and the president or secretary of the company shall notify the insurance commissioner that the capital of the company has been paid in, and that it is ready to commence business, whereupon the insurance commissioner shall, in person or by deputy, examine the assets of the company, and in case he finds that it is possessed of money or assets invested in the manner hereinafter specified, equal to the amount of its capital stock, less the necessary expenses of organization, he shall issue to said company a certificate showing that it has been organized in accordance with the provisions of this act, and that it has the requisite amount of capital for the transaction of business in the State, which certificate shall empower the company to issue policies, and otherwise do the business of insurance for which it was organized.[10]

Capital Stock of Fire, Marine, and Inland Companies.

894. Joint stock companies organized under this act, for any of the purposes of insurance mentioned in the first division of the first section, shall have a capital stock of not less than one hundred thousand dollars. Mutual companies, for any of the purposes aforesaid, may accept risks and issue policies, whenever applications be made for insurance to the amount of two hundred thousand dollars, and authority to commence business has been granted in the manner hereinbefore provided.[11]

[9] Act of May 1, 1876, Sec. 9, P. L. 53.
[10] Act of May 1, 1876, Sec. 10, P. L. 53.
[11] Act of May 1, 1876, Sec. 11, P. L. 53.

Requisite Capital of Life, Health, and Accident Companies.

895. Joint stock companies organized to insure lives, as specified in the second division of the first section of this act, must have a capital stock of at least three hundred thousand dollars. Joint stock companies organized to insure health or against accidents, as specified in the third paragraph of the first section of this act, must have a capital stock of at least one hundred thousand dollars.[12]

Capital of Live Stock and Certain Other Companies.

896. Joint stock companies organized for any of the purposes of insurance mentioned in the fourth division of the first section of this act, must have a capital stock of at least one hundred thousand dollars, invested as required in this act for fire and marine companies. Mutual companies, organized for any of the purposes mentioned in said division, may accept risks and issue policies upon complying with all the conditions hereinbefore prescribed for mutual fire insurance companies.[13]

Power to Make By-Laws, Etc.

897. Any company organized under this act shall have power to make such by-laws as may be deemed necessary for the government of its officers and the conduct of its affairs, and the same, when necessary, to alter and amend, and to make and have a common seal, and change and alter the same at their pleasure.[14]

Election of Directors—Special Elections.

898. The annual meeting for the election of directors shall be held at such time, in the month of January, as the by-laws of the company may direct; of the time and place of which meeting at least thirty days' previous notice shall be given to the stockholders, by publication not less than three times, in at least two daily papers published in the city of Philadelphia, if the company is located in said city, or by similar publications, in case the company is located in the city of Pittsburg, or in case the company is located elsewhere, by like

[12] Act of May 1, 1876, Sec. 12, P. L. 53.
[13] Act of May 1, 1876, Sec. 13, P. L. 53.
[14] Act of May 1, 1876, Sec. 14, P. L. 53.

publication in daily or weekly papers published in the proper county; and at such annual meeting the stockholders or members shall elect, by ballot, not less than five nor more than thirteen directors, to serve for one year, and until their successors are duly chosen. At all elections for directors in joint stock companies created under this act each share of stock, and in mutual fire companies each member, shall be entitled to one vote, subject to such regulations with regard to voting by proxy as the by-laws of the company may prescribe; and if for any cause the stockholders shall fail to elect directors at any annual meeting, the directors may call a special meeting for that purpose on some subsequent day, of which notice shall be given as herein directed.[15]

Selection of President—Powers of Directors.

899. The directors shall choose, by ballot, a president from their own number, and shall fill all vacancies that may arise in the board or in the presidency thereof; and the board of directors, or a majority of them, when statedly convened at the office of the company, or when convened after special notice given to each member of the board, shall be competent to exercise all the powers vested in them by law. They shall also have power to appoint and fix the salaries or compensation of a secretary, and such other officers and agents as they may deem necessary for the proper transaction of the business of the company.[16]

[15] Act of May 1, 1876, Sec. 15, P. L. 53.
[16] Act of May 1, 1876, Sec. 16, P. L. 53.

CHAPTER LXVI.

MANUFACTURING, MINING AND QUARRYING COMPANIES.

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Incorporation.

900. [Corporations may be incorporated for] the carrying on of any mechanical, mining, quarrying or manufacturing business, including all of the purposes covered by the provisions of the acts of General Assembly, entitled "An Act to encourage manufacturing operations in this Commonwealth," approved April seventh, one thousand eight hundred and forty-nine, [and] entitled "An act relating to corporations for mechanical, manufacturing, mining and quarrying purposes," approved July eighteenth, one thousand eight hun-

dred and sixty three, and the several supplements to each of said acts.[1]

[1] Act of May 21, 1889, Sec. 1, P. L. 259, amending the Act of June 21, 1883, Sec. 1, which amended the Act of April 29, 1874. The Act of April 29, 1874, repealed the Acts of April 24, 1854, P. L. 437, and July 18, 1863, P. L. 1102 (1864), in so far as the latter acts related to the incorporation of mining companies: Glenwood Coal Co., 6 Pa. C. C. R. 575 (1889).

The Act of April 7, 1849, P. L. 563, entitled "An act to encourage manufacturing operations in this Commonwealth," provided for the incorporation of companies "for the purpose of carrying on the manufacturing of woolen, cotton, flax, or silk goods, or of iron, paper, lumber, or salt in this Commonwealth." The Act of April 20, 1853, amending the Act of April 7, 1849, extended the former act so as to embrace companies formed "for mining coal, and for mining, quarrying, and preparing for market lime, marl, soda, hydraulic cement, or other minerals, and smelting copper, lead, tin, or zinc ores, and for quarrying marble, stone, or slate, and for the manufacture of lumber, with the right of preparing for market the produce of their said mines and quarries, and vending the same." The Act of April 14, 1851, Sec. 19, P. L. 576, still further extended the Act of April 7, 1849, so as to include companies formed to carry on the "business of printing and publishing." The Act of March 27, 1854, Sec. 4, P. L. 215, extended the Act of April 7, 1849, so as to include "companies formed for the purpose of transporting merchandise, or articles of whatsoever nature, passengers, or United States mail, either by land or water." The Act of April 1, 1863, P. L. 191, extended the Act of April 7, 1849, so as to embrace companies formed "for the purpose of carrying on the manufacture and preparation of lubricating oil, and material out of and from mineral oils, and any other oils whether mineral, animal, or vegetable."

The Act of July 18, 1863, P. L. 1102 (1864), entitled "An act relating to corporations for mechanical, manufacturing, mining, and quarrying purposes," provided for the incorporation of companies "for the purpose of carrying on any mechanical, mining, quarrying, or manufacturing business in this Commonwealth, except that of distilling or manufacuring intoxicating liquors." The Act of March 27, 1867, P. L. 47, extended the Act of July 18, 1863, so as to embrace companies formed "for the purchase and sale of patents granted by the authorities of the United States, and of rights and licenses under said patents, and for the manufacture and sale of patented articles." The Act of March 3, 1868, extended the Act of July 18, 1863, so as to include "the business of printing and publishing a newspaper, and of job printing in connection therewith." The Act of March 17, 1872, P. L. 292, extended the Act of July 18, 1863, so as to include "any horticultural or agricultural business, as well as the business of raising and growing of trees, plants, seeds, and grains." The Act of March 12, 1872, P. L. 22, extended the Act of July 18, 1863, "to the transportation and storage of petroleum in the counties

The general term "minerals" should not be used in the statement of purpose of a mining company for incorporation of the Act of 1874. The purpose should be limited to some one particular kind of mining. "The policy of the corporation act is to require specific statement of the purposes of a corporation. This is for purposes of identification and strict ascertainment of corporate franchises by accurately defined boundaries. If, in the subsequent prosecution of the proper work of the corporation, there are incidentally discovered and produced other minerals, there would be no difficulty in amending the charter so as to cover any profitable production and disposition of any such other minerals under the broad and liberal power of amendment conferred by the corporation act and its supplements, provided, of course, such amendment be confined to a purpose germane to the main and proper purpose for which the corporation was originally incorporated, and naturally connected therewith and incidental thereto. Indeed, I am strongly inclined to the opinion that in such case an amendment would not be necessary and that there is implied in the organization and incorporation of a mining company for the purpose of mining and producing any particular kind of minerals, the power to produce and make available such other minerals as may be discovered and developed in the course of the prosecution of the principal work of the corporation. A corporation would not be bound to allow valuable material, which might be brought to the surface in a mining operation, to go to waste or to remain undisposed of. At any rate, the power of amendment, as already suggested, would easily cover the production and profitable disposal of such material, if incidental or reasonably

of Venango, Warren, Forest, Armstrong, Clarion, Butler, Crawford, and Erie." The Act of April 9, 1873, extended the Act of July 18, 1863, so as to include the "business of buying, producing, storing, refining, transporting, selling, and dealing generally in petroleum." The Act of March 27, 1873, extended the Act of July 18, 1863, so as to include "the building or erection of piers or wharves, bridges, et cetera, under water, and for other submarine operations."

germane to the main purpose. If the original purpose should fail, through the absence of the minerals specifically described in the original certificate at the place of the operation of such company, and some new and different minerals should be developed, all difficulty would be obviated, and the case provided for by surrendering the old charter and applying for a new charter under the provisions of the Act of 1874 and its supplements, for the purpose of prosecuting the work of mining and developing the new and different minerals so discovered."[2]

Powers—Stock.

901. Companies incorporated under the provisions of this act for the carrying on of any mechanical, mining, quarrying, manufacturing or other business, as provided in clause eighteen of the second class, in section two hereof, when not otherwise provided in this act, shall, from the date of the letters-patent creating the same, have the powers and be governed, managed, and controlled as follows:

That every such corporation may have a capital stock not exceeding five million dollars, and may by a vote of three-fourths of the general stockholders, at a meeting duly called for the purpose, issue two kinds of stock, namely : general stock and special stock ; the special stock shall at no time exceed two-fifths of the actual capital of the corporation, and shall be subject to redemption at par, after a fixed time to be stated in the certificates. Holders of such special stock shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed or half-yearly sum or dividend to be expressed in the certificates, not exceeding 4 per centum, and they shall in no event be liable for the debts of the corporation beyond their stock.[3]

Payment of Stock Assessment.

902. That if the proprietor of any share neglect to pay the sum duly assessed thereon, for the space of thirty days after the time appointed for payment, the treasurer of the company

[2] Per KIRKPATRICK, Attorney-General, in Glenwood Coal Co., 6 Pa. C. C. R. 575 (1889).

[3] Act of April 29, 1874, Sec. 39, P. L. 101.

may sell by public auction a sufficient number of the shares to pay all assessments then due, with necessary and incidental charges thereon. The treasurer shall give notice of the time and place appointed for such sale, and of the sum [*due*] on each share, by advertising the same three weeks successively before the sale, in some newspaper published in said county; and a deed of the share so sold made by the treasurer, and acknowledged before a justice of the peace, and recorded by the clerk, [who] shall transfer said shares to the purchaser, who shall be entitled to a certificate therefor.[4]

Certificate of Capital Stock to be Recorded.

903. The president and directors, with the treasurer and clerk of such companies, shall, after the payment of the last instalment of the capital stock, make a certificate stating the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the president, treasurer, clerk and a majority of the directors, and they shall cause the same to be recorded in the office of the recorder of deeds for said county.[5]

Withdrawal of Capital.

904. If any part of the capital stock of a company is withdrawn and refunded to the stockholders, before the payment of all the debts of the company contracted previously to the recording of a copy of the vote for that purpose in the office of the recorder of deeds, as prescribed in the preceding section, all the stockholders of the company shall be jointly and severally liable for the payment of such debts.[6]

Dividends—Liability of Directors.

905. If the directors of any company declare any dividend when the company is insolvent, or the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the company then existing, and for all thereafter contracted, so long as they respectively continue in office: Provided, That the amount for which they

[4] Act of April 29, 1874, Sec. 39, Cl. 2, P. L. 101. The Act of May 25, 1887, P. L. 273, abolished the power of the corporation to assess any sum in addition to the par value of the stock.

[5] Act of April 29, 1874, Sec. 39, Cl. 3, P. L. 101.

[6] Act of April 29, 1874, Sec. 39, Cl. 4, P. L. 101.

shall be liable shall not exceed the amount of such dividend, and if any of the directors are absent at the time of making the dividend or object thereto, at said time, and file their objections in writing with the clerk of the company, they shall be exempted from such liability.[7]

Indebtedness—Liability of Directors.

906. The whole amount of the debts which any such company at any time owes, shall not exceed the amount of its capital stock actually paid in, unless such debt be for unpaid purchase-money for lands bought, which debt shall only be a lien upon and collectible from said land ; and in case of any excess, the directors, under whose administration it occurs, shall be jointly and severally liable to the extent of such excess for all the debts of the company then existing, and for all that are contracted, so long as they respectively continue in office, and until the debts are reduced to the amount of the capital stock: Provided, that any of the directors who are absent at the time of contracting any debts, contrary to the foregoing provisions, or who object thereto, may exempt themselves from liability by forthwith giving notice of the facts to the stockholders, at a meeting which they may call for that purpose.[8]

Penalty for False Certificate.

907. If any certificate made, or any statement or notice given by the officers of a company, under the provisions of this act, is false in any material representation, all the officers who signed the same, knowing it to be false, shall be jointly and severally liable for all the debts of the company contracted while they were officers or stockholders thereof.[9]

Power to Hold and Convey Real and Personal Estate.

908. Such corporation may, in its corporate name, take, hold and convey such real and personal estate as is necessary for the purpose of its organization, may carry on its business, or so much thereof as is convenient, beyond the limits of the

[7] Act of April 29, 1874, Sec. 39, Cl. 5, P. L. 101. See Chapter XVIII, Directors.

[8] Act of April 29, 1874, Sec. 39, Cl. 6, P. L. 101.

[9] Act of April 29, 1874, Sec. 39, Cl. 6, P. L. 102. See Lane's Ap., 105 Pa. 49 (1884).

Commonwealth, and may there hold any real or personal estate necessary for conducting the same.[10]

Annual Certificate to be Filed.

909. Every such corporation shall, annually, in September, make, and the president, treasurer, and a majority of the directors, shall sign, swear to, and deposit with the recorder of deeds for said county, a certificate stating the amount of capital stock paid in, the names and number of shares held by each stockholder, the amount invested in real estate and in personal estate, the amount of property owned and debts due to the corporation, on the first day of August next preceding the date of such certificates, and the amount, as nearly as can be ascertained, of existing demands against the corporation at the date of the certificate.[11]

Liability for Failure to File Certificates.

910. When the officers of such corporation have failed to perform the duties prescribed in this act, as to making certificates, the certificates therein mentioned may be made and filed at any time after such failure ; and such officers shall not be personally liable for debts of the corporation contracted after the requisitions of this act have been complied with.[12]

Service of Process.

911. Process shall be served upon such corporations in the same manner as is now directed by law with regard to other corporations.[13]

Dissolution.

912. The Court of Common Pleas of the proper county shall have the same power to dissolve such corporation, upon petitions filed under the corporate seal, which it now has with regard to other corporations.[14]

[10] Act of April 29, 1874, Sec. 39, Cl. 7, P. L. 102.
[11] Act of April 29, 1874, Sec. 39, Cl. 8, P. L. 102.
[12] Act of April 29, 1874, Sec. 39, Cl. 9, P. L. 102.
[13] Act of April 29, 1874, Sec. 39, Cl. 10, P. L. 102.
[14] Act of April 29, 1874, Sec. 39, Cl. 10, P. L. 103. See Chapter XXXVII, Dissolution.

Special Stock—Liability of General Stockholders.

913. When special stock is created by any corporation, under this act, the general stockholders shall be liable for all debts and contracts until the special stock is fully redeemed.[15]

Individual Liability of Stockholders.

914. The stockholders of any and all corporations, under this act shall be personally liable for all sums of money due to laborers, clerks, and operatives, for services rendered within six months before demand made upon the corporation, and its neglect or refusal to make payment; and when judgment is obtained against any corporation for wages or labor due to an amount not exceeding two hundred dollars, said corporation shall not be entitled to stay of execution.[16]

Powers as to Real Estate.

915. Any such corporation may, from time to time, acquire and dispose of real estate, and may construct, have or otherwise dispose of dwellings and other buildings; but no power to sell or release the real estate of such corporation shall be exercised by the directors thereof, unless such power be expressly given in the certificates originally filed, without a consent of a majority of the stock in value consenting and agreeing to such sale or lease before making the same, which consent shall be obtained at a meeting of the stockholders, to be held for that purpose, of which meeting thirty days' notice shall be given in one of the newspapers of the proper county, and such consent shall be evidenced only by the written signatures of said stockholders.[17]

Power to Condemn Land.

916. Companies organized for any of the purposes set forth in the eighteenth clause of the second section of this act, whether such companies shall have been organized under any special act of assembly or under the general acts, in said eighteenth clause enumerated, and not having for their object the supplying of any village, borough or city with water,

[15] Act of April 29, 1874, Sec. 39, Cl. 10, P. L. 103.

[16] Act of April 29, 1874, Sec. 39, Cl. 11, P. L. 103. See Chapter XXX, Liability of Stockholders.

[17] Act of April 29, 1874, Sec. 39, Cl. 12, P. L. 103.

shall have all the rights, privileges, and powers conferred by the said eighteenth clause, and the right to take lands, waters or rivulets shall be exercised in the manner provided in the forty-first section of this act.[18]

After Expiration of Charter may Wind Up Affairs.

917. All corporations for mining, manufacturing or trading purposes, whether created by general or special Acts of Assembly, whose charters may have expired, or may hereafter expire, may bring suits, and maintain and defend suits already brought, for the protection and possession of their property, and the collection of debts and obligations owing to, or by, them, and sell, convey, and dispose of their property, and make title therefor, as fully and effectually as if their charters had not expired ; and the officers last elected, or the survivors of them, shall be officers to represent said corporations for such purposes, and if no officers survive, the stockholders may elect officers under their by-laws: Provided, that this act shall be construed only so as to enable said corporations to realize and divide their assets, and wind up their affairs, and not to transact new business.[19]

Treasurer's Accounts.

918. The treasurer of every manufacturing or mining company now incorporated or hereafter incorporated under any special or general law of this Commonwealth, shall keep the moneys of the corporation in a separate bank account, to his credit as treasurer, under the penalty of fifty dollars for every day he shall fail to comply with said duty, to be recovered at the suit of any informer, in an action of debt ; and every director of any such corporation who shall consent to such breach of duty, or, having knowledge thereof, shall not enter his protest on the minutes of the company, shall be liable to the same penalty, to be recovered in like manner.[20]

Corporation Stores.

919. Every manufacturing, mining or quarrying company incorporated under the provisions of this act shall be con-

[18] Act of June 12, 1879, P. L. 177, amending the Act of April 29, 1874, Sec. 34, Cl. 4.

[19] Act of May 21, 1881, P. L. 30, and June 8, 1874, P. L. 278.

[20] Act of April 17, 1869, Sec. 2, P. L. 71.

fined exclusively to the purposes of its creation, as specified in its charter, and no such company shall manufacture or sell any commodity or article of merchandise other than those therein specified. No such company shall engage in nor shall it permit any of its employees or officials to engage in the buying or selling upon the lands possessed by it of any wares, goods or commodities or merchandise, other than those specified in their charter or necessary for the manufacture of the same. No such company shall permit to be withheld or authorize or direct the withholding of wages due any of its operatives or employees by reason of the sale or furnishing of goods, wares or merchandise by any person to such operatives or employees, unless the same be withheld by reason of and in obedience to due process of law; but nothing herein contained shall prohibit any such company from supplying to its employees oil, powder, and other articles and implements necessary for or used in mining.[21]

Company or General Supply Stores Prohibited.

920. On and after the passage of this act, it shall not be lawful for any mining or manufacturing corporation of this Commonwealth, or the officers or stockholders of any such corporation, acting in behalf of or in the interest of any such corporation, to engage in or carry on, by direct or indirect means, any store known as a company store, general supply store, or store where goods and merchandise other than such as have been mined or manufactured by the mining or manufacturing corporation of which said officers or stockholders are members are kept or offered for sale.[22]

[21] Act of April 29, 1874, Sec. 43, P. L. 106.

[22] Act of June 9, 1891, P. L. 256, Sec. 1. If the corporations of the State are violating any of the provisions of the Act of 1891, those persons who have knowledge of violation, and could give information to the attorney-general, must be held responsible for any continuance of such unlawful acts. In every case where the law is known to have been violated by any corporation, and complaint is made to the department of the attorney-general by a petition signed and sworn to by two or more citizens, prompt action will be taken to forfeit the charter of such offending corporation: Price *v.* Sonman Coal Mining Co., 20 Pa. C. C. R. 287 (1898). Per McCormick, Attorney-General.

A complaint, which would authorize the intervention of the Commonwealth under the company store law of 1891, P. L. 251, should be such as at least to make a *prima facie* case, and the writ of *quo warranto* ought

Leasing or Selling Right to Maintain Company Stores Prohibited.

921. No mining or manufacturing corporation engaged in business under the laws of this Commonwealth, shall lease, grant, bargain or sell to any officer or stockholder of any such corporation, nor to any other person or persons whatsoever, the right to keep or maintain upon the property of any such corporation, any company, general supply or other store in which such goods other than those mined or manufactured by the corporation granting such right, shall be kept or exposed for sale, whenever such lease, grant, bargain or sale as aforesaid, is intended to defeat the provisions of the first section of this act. Nor shall any such mining or manufacturing corporation, through its officers, stockholders, or by any rule or regulation of its business, make any contract with the keepers or owners of any store, whereby the employees of such corporation shall be obliged to trade with such keeper or owner, and that any such contract made in violation of this act, shall be *prima facie* evidence of the fact that such store is under the control of such mining or manufacturing corporation, and in violation of this act.[23]

Violation to Forfeit Charter—Proceedings.

922. For any violation of any of the provisions of this act by any mining or manufacturing corporation aforesaid, such mining or manufacturing corporation so offending shall forfeit all charter rights granted to it under the laws of this Commonwealth, and it is hereby declared and made the duty of the attorney-general of this Commonwealth, upon complaints of such violation of any of the provisions of this act, by a petition signed and sworn to by two or more citizens, residents of the county where the offense is sworn to have been committed, to immediately commence proceedings against the corporation or corporations complained against, by a writ of *quo warranto*.[24]

Tank to be Prepared for Reception of Coal, Dirt, Etc.

923. All persons engaged in any of the manufacturing in-

not to be allowed where it is apparent the litigation would not be successful in court: Funk *v.* Cambria Iron Co.., 17 Pa. C. C. R. 415 (1896).

[23] Act of June 9, 1891, P. L. 256, Sec. 2.

[24] Act of June 9, 1891, Sec. 3, P. L. 256.

terests of this State, accustomed to the washing of iron and other ores, and of coal preparatory to its use for coking, or the tanning of hides by a process in which vitriol is used, shall prepare a tank or other suitable receptacle into which the culm or coal dirt, the offal, refuse and the tan bark and the liquor, or the water therefrom, may be collected, so that the sediment therefrom, so far as is practicable, may be thereby prevented from passing into or upon any of the rivers, lakes, ponds or streams of this Commonwealth, under a penalty of fifty dollars for each offense, in addition to liability for all damages he or they may have done to any individual owners or lessees on such waters.[25]

Extension of Charter.

924. The charters of all manufacturing corporations granted in accordance with the provisions of the present Constitution of this Commonwealth, and the Act of General Assembly, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April twenty-ninth, one thousand eight hundred and seventy-four, and the charters of all manufacturing corporations that have accepted the provisions of the said Constitution and Act of Assembly, which charters were limited in their duration by the articles of association or by the act of Assembly under which they were granted, and have now expired or shall hereafter expire, are hereby extended for a period of twenty-five years from the date of the expiration of said charters: Provided, that a bona fide organization has taken place and business has been commenced in good faith within a period of two years from the date of the granting of said charters: Provided further, that manufacturing concerns availing themselves of the provisions of this act shall first pay into the treasury of this Commonwealth the fee and the bonus upon their capital stock now fixed by law for the renewal or extension of a corporate charter: And provided further, that upon the payment of said fees and bonus and the production to the secretary of the Commonwealth of evidence that the terms of this act have been complied with, letters-patent shall issue to said manufacturing corporation.[26]

No exercise of franchise, grant, bargain and sale, feoff-

[25] Act of May 8, 1876, Sec. 1, P. L. 146.

[26] Approved June 25, 1895, Sec. 2, P. L. 310.

ment, deed of conveyance, release, assignment or other assurance of lands, tenements, and hereditaments, contract or agreement whatsoever, made, executed, and delivered prior to June first, one thousand eight hundred and ninety-five, by any corporation of this Commonwealth, or by the successor of any such manufacturing corporation, shall be deemed, held or adjudged invalid or defective or insufficient in law by reason of the expiration of the term of its charter, but all and every such exercise of franchises, grant, bargain and sale, feoffment, deed of conveyance, release, assignment or other assurance, contract or agreement so made, executed, and delivered shall be as good, valid, and effectual in law and fact as if the charter of such corporation, or of the successor of such corporation, had not expired or had been renewed or extended : Provided however, That such corporation or the successor thereof has accepted the provisions of the Constitution of this Commonwealth and the Act of Assembly, entitled "An act to provide for the incorporation and regulation of certain corporations," approved the twenty-ninth day of April, Anno Domini one thousand eight hundred and seventy-four: And provided further, that not more than ten years has elapsed since the expiration of the term of such charter.[27].

[27] Act of May 16, 1895, P. L. 84.

CHAPTER LXVII.

NATURAL GAS COMPANIES.

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927. Requisites of Certificate.
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931. Election of Stockholders for or against Increase.
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941. Right of Such Company to Enter Cities and Boroughs.
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944. Taxation.
945. Abandoned Wells to be Plugged.
946. Penalty for Violation of Preceding Section.
947. Owners of Adjoining Lands may Plug Wells at Expense of Company.

Formation and General Powers.

925. Corporations may be formed in the manner mentioned herein by the voluntary association of five or more persons, or as otherwise provided herein, for the purpose of producing, dealing in, transporting, storing, and supplying natural gas to such persons, corporations or associations, within convenient connecting distance of its line of pipe, as may desire to use the same, upon such terms and under such reasonable regulations as the gas company shall establish, and when so formed, each of them, by virtue of its existence as such, shall have the following powers:

I. To have succession by its corporate name for the period limited by its charter, and when no period is limited thereby, perpetually, subject to the power of the General Assembly, under the Constitution of the Commonwealth.

II. To maintain and defend judicial proceedings.

III. To make and use a common seal, and alter the same at pleasure, and have a capital stock, not exceeding five million dollars, divided into shares such as each company may determine.

IV. To produce, mine, own, deal in, transport, store, and supply natural gas, for either light, heat, or both, or other purposes, and have all the rights and privileges necessary or convenient therefor.

V. To hold, purchase, maintain, lease, mortgage, sell, and transfer such real and personal property, including pipes, tubing, tanks, office, and such other machinery, devices or arrangements, as the purposes of the corporation require, and the right also to enter upon, take, and occupy such lands, easements, and other property as may be required for the purpose of laying its pipes for transporting and distributing gas.

VI. To appoint and remove such subordinate officers and agents as the business of the corporation requires, and to allow them suitable compensation.

VII. To make by-laws, not inconsistent with the law, for the election and regulation of its directors and officers, the management of its property, the regulation of its affairs, and the subscription, collection, and transfer of its stock.[1]

Contents and Certificate.

926. The charter of such intended corporation must be subscribed by five or more persons, three of whom, at least, shall be citizens of this Commonwealth, who shall certify in writing to the governor:

I. The name of the corporation.

II. The place or places where natural gas is intended to be mined for and produced or received, the place or places where it is to be supplied to consumers, the general route of its pipe line or lines and branches, the location of its general office.

[1] Act of May 29, 1885, Sec. 1, P. L. 29.

III. The term for which said corporation is to exist, which may be limited as to time, or be perpetual.

IV. The names and residences of the subscribers, and the number of shares subscribed by each.

V. The number of its directors, and the names and residences of those chosen directors for the first year.

VI. The amount of its capital stock, and the number and par value of shares into which divided.[2]

Requisites of Certificate.

927. Notice of the intention to apply for any such charter shall be inserted in two newspapers of general circulation, printed in each of the counties named in the charter for said corporation, for three weeks, setting forth briefly the character and object of the corporation to be formed, and the intention to make application therefor, and the places where its business in its various branches is to be conducted. The certificate to the governor shall state that 10 per centum of the capital stock named therein has been paid in cash to the treasurer of the intended corporation, and the name and residence of the treasurer shall be therein given; said certificate shall be acknowledged by at least three of the subscribers thereto, before the recorder of deeds of the county in which its principal office is situate, and the subscribers shall also make and subscribe an oath or affirmation before him, to be indorsed on the certificate, that the statements contained therein are true; the certificate so indorsed, accompanied with proof of publication of notice as heretofore provided, shall then be produced to the governor of the Commonwealth, who shall examine the same, and, if he finds it to be in proper form and within the purpose named herein, shall approve thereof and indorse his approval thereon, and direct letters-patent to issue in the usual form, incorporating the subscribers and their associates and successors into a body politic and corporate, in deed and in law by the name chosen; and the certificate shall be recorded in the office of the secretary of the Commonwealth, in a book to be by him kept for that purpose, and he shall forthwith furnish to the auditor-general an abstract therefrom, showing the name, location, amount of capital stock, and name and address of the treasurer of the corporation. The original certificate, with all of its indorsements

[2] Act of May 29, 1885, Sec. 2, P. L. 29.

shall then be recorded in the office for recording deeds in and for each of the counties named therein, and from thenceforth the subscribers thereto, and their associates and successors, shall be a corporation for the purposes and upon the terms named in said certificate: Provided, that neither this act nor any other shall be so construed as to confer, authorize, or give color to any claim of exclusive right in any corporation, howsoever formed, dealing in any way or for any purpose in natural gas.[3]

The Act of 1885 did not affect the powers of a natural gas company in existence by virtue of a charter granted prior to the adoption of the Constitution of 1874.[4]

But a natural gas company incorporated prior to the Act of May 29, 1885, P. L. 29, and not having accepted the provisions of that act, and not having begun supplying natural gas within the limits of a borough, cannot, without the consent of the borough authorities, lay its pipes in the streets of the borough.[5]

A company may be incorporated for the purpose of furnishing natural gas for lighting purposes to the citizens of a borough, although another company has been previously chartered to supply the same borough with manufactured gas for lighting purposes.[6]

A natural gas company will not be incorporated under the Act of May 29, 1885, where the application for the charter states that the operations of the company are to cover certain counties in this State and certain territory of an adjoining State.[7]

[3] Act of May 29, 1885, Sec. 2, P. L. 29.

[4] Carothers *v.* Philadelphia Co., 118 Pa. 468 (1888).

[5] Philadelphia Co. *v.* Freeport Borough, 167 Pa. 279 (1895).

[6] Warren Gas Light Co. *v.* Penna. Gas Co., 13 Pa. C. C. R. 310 (1893); Citizens' Natural Gas Co., 9 Pa. C. C. R. 290 (1890).

[7] United Natural Gas Co., 1 Pa. C. C. R. 468 (1886). In refusing the application in this case Deputy Attorney-General SNODGRASS said: "While the State of Pennsylvania may permit her corporations to transact their corporate business beyond the limits of the State, it would be not only a work of supererogation, but of doubtful propriety as well, to

The Act of 1885 does not confer upon natural gas companies exclusive rights and unlimited power to fix rates.[8]

A natural gas company may be restrained by an injunction from shutting off the supply of gas until the rate is paid in excess of that for which the company agreed to supply a borough and its citizens.[9]

Power to Borrow Money Upon Mortgage.

928. It shall be lawful for all corporations named in this act to borrow money to secure any indebtedness created by them, by issuing bonds with or without coupons attached thereto, and to secure the same by a mortgage or mortgages, for the use of the bondholders, upon their property, real and personal, and their franchises, to an amount not exceeding one-half of the capital stock of the corporation paid in, and at a rate of interest not exceeding 6 per centum.[10]

Capital Stock or Indebtedness may be Increased.

929. The capital stock or indebtedness of any corporation created under this act may be increased, or its capital stock may be reduced, from time to time, by consent of the person or bodies corporate holding the larger amount in value of the stock of such company, but such increase of capital stock or

undertake to include in her grant rights which could not be exercised except by the express authority of her sister State. Especially would this be so in the case of a corporation created under the natural gas Act of 1885, which not only confers the right of eminent domain, but includes many other privileges not exercisable at all except by express grant. The inclusion of such a grant of extra-territorial franchises in a charter would, therefore, to say the least, be objectionable as surplusage. It would also be irrelevant, and would, for that reason, violate the rule laid down by Attorney-General DIMMICK, that a certificate of incorporation ought not to be approved when 'it contains unnecessary or irrelevant matter.' For still stronger reason it ought not to receive executive sanction where the matter is not only surplusage, but undertakes to confer privileges which, when conferred, would be without force or validity in the State where they are intended to be exercised. Without adding more, therefore, I am of the opinion that this application ought to be reformed so as to exclude all matter relating to or purporting to confer franchises to be exercised within the State of New York."

[8] Waddington *v.* Allegheny Heating Co., 6 Pa. C. C. R. 96 (1888).

[9] Sewickley Borough *v.* Ohio Valley Gas Co., 6 Pa. C. C. R. 99 (1888).

[10] Act of May 29, 1885, Sec. 3, P. L. 29.

indebtedness shall only be made for labor done, or money or property actually received. But every corporation, created under the provisions of this act, may purchase such real and personal estate, mineral rights, patent rights, and other property as is necessary for the purpose of its organization and business, and issue stock therefor, and the stock so issued shall be declared and taken to be full paid stock, and not liable to any further calls or assessments, and in the charter and certificates and statements to be made by the subscribers and officers of the corporation, such stock shall not be stated or certified as having been issued for cash paid into the company, but it shall be stated or certified in this respect according to the fact.[11]

Mode of Effecting Increase.

930. Any corporation formed hereunder, desirous of increasing its capital stock or indebtedness as provided by this act, shall, by a resolution of its board of directors, call a meeting of its stockholders therefor, which meeting shall be held at its chief office or place of business in this Commonwealth, and notice of the time, place, and object of the meeting shall be published, once a week, for sixty days prior to such meeting, in at least one newspaper published in the county, city or borough wherein such office or place of business is situate.[12]

Election of Stockholders for or against Increase.

931. At the meeting thus called an election of the stockholders of the corporation shall be taken for or against the proposed increase, which shall be conducted by three judges, who shall be stockholders of the corporation appointed by the board of directors to hold the election, and if one or more of the judges be absent, the judge or judges present shall appoint a judge or judges, who shall act in the place of the judge or judges absent, and who shall respectively take and subscribe an oath or affirmation before an officer authorized by law to administer oaths, well and truly and according to law to conduct the election to the best of their ability, and the judges shall decide upon the qualification of voters, and

[11] Act of May 29, 1885, Sec. 4, P. L. 29.
[12] Act of May 29, 1885, Sec. 6, P. L. 29.

when the election is closed, count the number of shares voted for and against such increase, and declare whether the persons or bodies corporate, holding the larger amount of the stock of the corporation, have consented to the increase or refused to consent thereto, and shall make out duplicate returns of the election, stating the number of shares of stock that voted for the increase, and the number that voted against the same, and subscribe and deliver the same to one of the chief officers of the company.[13]

Form of Ballot.

932. Each ballot shall have indorsed thereon the number of shares thereby represented, and be signed by the holder thereof, or by the person holding a proxy therefor, but no share or shares transferred within sixty days shall entitle to vote at such election or meeting, nor shall any proxy be received or entitle the holder to vote unless the same shall bear date and have been executed within three months next preceding the election or meeting; and it shall be the duty of the corporation to furnish the judges at such meeting with a statement of the amount of its capital stock, with the names of persons or bodies corporate holding the same, and the number of shares by each respectively held, which statement shall be signed by one of the chief officers of the corporation, with an affidavit thereto annexed, that the same is true and correct to the best of his knowledge and belief.[14]

Proceedings When Increase is Consented to.

933. It shall be the duty of such corporation, if consent is given to such increase, to file in the office of the secretary of the Commonwealth, within thirty days after the election or meeting, one of the copies of the return of such election, with a copy of the resolution and notice calling the same thereto annexed; and upon the increase of the capital stock or indebtedness of the corporation, made pursuant thereto, it shall be the duty of the president or treasurer of such corporation, within thirty days thereafter, to make a return to the secretary of the Commonwealth, under oath, of the amount of the increase and terms of the same—that is to say, the terms on which the additional stock is issued; and in case

[13] Act of May 29, 1885, Sec. 7, P. L. 29.
[14] Act of May 29, 1885, Sec. 8, P. L. 29.

of neglect or omission so to do, the corporation shall be subject to a penalty of five thousand dollars, which penalty shall be collected on an account settled by the auditor-general and state treasurer as accounts for taxes due the Commonwealth are settled and collected; and the secretary of the Commonwealth shall cause such returns to be recorded in a book to be kept for that purpose, and furnish a certified copy of the same to the auditor-general, and the corporation shall have a right to recover the same from the officer neglecting or omitting to file the return hereinbefore required.[15]

Eminent Domain.

934. The transportation and supply of natural gas for public consumption is hereby declared to be a public use, and it shall be the duty of corporations, organized or provided for under this act, to furnish to consumers along their lines and within their respective districts natural gas for heat or light or other purposes as the corporation may determine. Any and all corporations that is, or are now, or shall hereafter be engaged in such business, shall have the right of eminent domain for the laying of pipe lines for the transportation and distribution of natural gas; the right, however, shall not be exercised as to any burying ground or dwelling, passenger railroad station-house, or any shop or manufactory in which steam or fire is necessarily used for manufacturing or repairing purposes, but shall include the right to appropriate land upon or under which to lay said lines and locate pipes upon and over, under and across, any lands, rivers, streams, bridges, roads, streets, lanes, alleys, or other public highways, or other pipe lines, or to cross railroads or canals: Provided, in case the pipe lines cross any railroad operated by steam or canal, the same shall be located under or above such railroad or canal, and in such manner as the railroad or canal company may reasonably direct: And provided further, that any company laying a pipe line under the provisions hereof shall be liable for all damages occasioned by reason of the negligence of such gas company: And provided further, that no company authorized by this act shall have the right to occupy longitudinally the right of way, road-bed, or bridge of any railroad company: And

[15] Act of May 29, 1885, Sec. 9, P. L. 29.

provided, if any pipe line be laid under the provisions of this act, or laid upon or over lands cleared and used for agricultural purposes, the same shall be buried at least twenty-four inches below the surface; and if any line of pipe shall be laid over or through any waste or woodland, which shall be changed to farming land, then it shall be the duty of the corporation to immediately bury the said pipe to the depth of at least twenty-four inches as aforesaid. Prior to any appropriation, the corporation shall attempt to agree with the owner as to the damage properly payable for an easement in his or her property, if such owner can be found and is *sui juris*, failing to agree, the corporation shall tender to the property owner a bond with sufficient sureties to secure him or her in the payment of damages; if the owner refuse to accept said bond, or cannot be found, or is not *sui juris*, the same shall then be presented to the Court of Common Pleas of the proper county, after reasonable notice to the property owner by advertisement or otherwise, to be approved by it. Upon the approval of the bond, and its being filed, the right of the corporation to enter upon the enjoyment of its easement shall be complete. Upon petition of either the property owner or the corporation, thereafter, the Court of Common Pleas shall appoint three disinterested freeholders of the county to serve as viewers to assess the damages proper to be paid to the property owner, for the easement appropriated by the company, and shall fix a time for their meeting, of which notice shall be given to both parties; and as compensation for their services each of said viewers shall receive two dollars and fifty cents for each day in which he may actually have been engaged in such duty, and mileage at the rate of ten cents for each circular mile traveled by him in going from his residence to and from such view. Either party may appeal from the report of the viewers within twenty days after the filing thereof to the Court of Common Pleas, and have a jury trial as in ordinary cases, and writ of error to the Supreme Court.[16]

The system for the assessment of damages provided by the Act of 1885 applies to companies engaged in the trans-

[16] Act of May 11, 1897, P. L. 50, amending Act of May 29, 1885, Sec. 10, P. L. 29.

portation of natural gas at and before the passage of the act as well as to those organized under the act.[17]

Under the Act of 1885 a natural gas company which has the consent of the municipality to the use of the street, may lay its pipes on the sidewalks of the street, without subjecting itself to liability for damages to the owners of abutting property under the condemnation proceedings provided by the act. The only remedy of the landowner is by an action of trespass.[18]

The owners of coal may require a natural gas company to secure them for the easement of support.[19]

The measure of damages under the Act of 1885 is the difference between the damage done to land, and the special benefits accruing to it by reason of the maintenance of the gas pipes.[20]

Companies may Enlarge or Alter Territory of Production or Supply.

935. When and as often as any such corporation shall be desirous of enlarging or altering its territory of production or supply, for consumption, both or either of them, and its pipe line or lines, and branches, it shall thereupon make, under its common seal, and deposit in the office of the secretary of the Commonwealth, a certificate setting forth the particulars of such enlargement and alteration, and shall record in the office of the recorder of deeds of the county or counties to which the enlargement or alteration applies, a copy of the certificate, and thereupon and thereafter the rights, powers, and duties of the corporation shall be, as to the extension of its business and lines, as if the same had been originally provided for and embodied in its charter.[21]

[17] Carothers *v.* Philadelphia Co., 118 Pa. 468 (1888); Mallory *v.* City of Bradford, 1 Dist. Rep. 670 (1892).

[18] McDevitt *v.* People's Nat. Gas. Co., 160 Pa. 367 (1894).

[19] Penn Gas Coal Co. *v.* Versailles Fuel Gas Co., 131 Pa. 522 (1889); Davis *v.* Jefferson Gas Co., 147 Pa. 130 (1892).

[20] Fisher *v.* Baden Gas Co., 138 Pa. 301 (1890).

[21] Act of May 29, 1885, Sec. 5, P. L. 29.

The enlargement or alteration of territory of a natural gas company does not require to be advertised. All that is necessary to do under Sec-

Control of Councils.

936. The right to enter upon any public lane, street, alley, or highway for the purpose of laying down pipes, altering, inspecting, and repairing the same, shall be exercised in such way as to do as little damage as possible to such highways, and to impair as little as possible the free use thereof, subject to such regulations as the councils of any city may by ordinance adopt.[22]

Disputes Between Municipalities and Companies—Appeal.

937. In all cases where any dispute shall arise between such corporations and the authorities of any borough, city, township, or county, through, over, or upon whose highways, or between it and any landowner or corporation, through, over, or upon whose property or easement pipes are to be laid, as to the manner of laying the pipes and the character thereof, with respect to safety and public convenience, it shall be the duty of the Court of Common Pleas of the proper county, upon the petition of either party to the dispute, upon a hearing to be had, to define by its decree what precautions, if any, shall be taken in the laying of pipes, and, by injunction, to restrain their being laid in any other way than as decreed. It shall be the duty of the court to have the hearing and make its decree with all convenient speed and promptness. Either party shall have a right to appeal therefrom, as in cases of equity, to the Supreme Court, but the appeal shall not be a supersedeas of the decree, and proceedings shall be had in like manner, upon like petition, when and as often as any dispute arises as to pipes already laid, to define the duty of such corporations as to their re-laying, repair, amendment, or improvement.[23]

Right to Enter Borough or Cities Regulated.

938. Companies incorporated under this act, and not re-

tion 5 of the Act of May 29, 1885, is to deposit in the office of the secretary of the Commonwealth a certificate setting forth the particulars of such enlargement or alteration, and to record a copy of the certificate in the office of the recorder of deeds in the county or counties to which such enlargement or alteration applies: Penna. Gas. Co., 1 Pa. C. C. R. 181 (1886).

[22] Act of May 29, 1885, Sec. 11, P. L. 29.

[23] Act of May 29, 1885, Sec. 12, P. L. 29.

ferred to or included in the next succeeding section hereof, shall not enter upon or lay down their pipes or conduits on any street or highway of any borough or city of this Commonwealth without the assent of the councils of such borough or city, by ordinance duly passed and approved.[24]

Acceptance of Act by Existing Associations.

939. Any association of persons or corporations heretofore engaged in the business of transporting or dealing in natural gas for any purpose, whether under color of a charter or letters-patent of the Commonwealth, and whether authorized by said charter or letters-patent so to do or not, and any corporation by its charter authorized to furnish heat from gas, upon accepting the provisions of this act by writing under seal of the company, filed in the office of the secretary of the Commonwealth, and filing therewith its letters-patent or charter (which shall be a surrender and acceptance thereof) shall thereupon be a body corporate hereunder, and be entitled to, and possessed of, all the privileges, immunities, franchises, and powers conferred by this act upon corporations to be created under the same, and all the property, rights, easements, and privileges belonging to said associations and corporations, theretofore acquired by gift, grant, conveyance, municipal ordinance, or assignment, upon such acceptance as aforesaid, shall be, and hereby is ratified, approved, confirmed, and assured unto such acceptors and corporations, with like effect, and to all intents and purposes, as if the same had been originally acquired by and under the authority of this act; and such company or corporation shall thereafter be governed solely by the provisions of this act. And the governor shall forthwith issue to the said acceptors letters-patent under this act, under the same name as the company bore which surrendered its charter or letters-patent: Provided, that this section shall only apply to associations or corporations actually engaged in the transportation and supply of natural gas, or the supply of heat from the same, at and prior to the passage of this act: And provided further, that such corporations surrendering their charters, and accepting the provisions of this act, shall, with such acceptance and as a part thereof, state in writing the place or

[24] Act of May 29, 1885, Sec. 13, P. L. 29.

places where it is presently intended to mine for and produce or receive natural gas, and the place or places to which it is to be presently supplied, the general route of its pipe lines, the term for which the corporation is to exist, the amount of its capital stock, and the number and par value of its shares.[25]

Bonus Paid by Existing Associations.

940. Any association within the provisions of Section 14 shall, upon filing its written acceptance as therein provided, become and be entitled to a credit from the Commonwealth, to the amount of any bonus previously paid.[26]

Right of Such Company to Enter Cities and Boroughs.

941. This act shall not be so construed as to permit any corporation, accepting its provisions under and by virtue of Section 14 hereof, to enter into any city or borough without the assent of councils, except where the corporation, so accepting under Section 14, had, to some extent prior to the passage of this act, begun supplying natural gas within such city or borough, or had laid pipes for such purpose therein.[27]

City councils have the power, first, to give or withhold assent to enter upon the city streets, and second, to adopt regulations, the reasonableness of which is a judicial question.[28]

Consolidation of Two or More Companies.

942. Any two or more companies existing under this act may, with the consent of a majority of the stockholders in value in each, consolidate with each other into one corporation, under such name as may be agreed, upon filing a certificate to such effect in the office of the secretary of the Commonwealth, and thereupon such consolidated company shall

[25] Act of May 29, 1885, Sec. 14, P. L. 29.

[26] Act of May 29, 1885, Sec. 15, P. L. 29.

[27] Act of May 29, 1885, Sec. 16, P. L. 29.

[28] City of Pittsburgh's Ap., 115 Pa. 4 (1886). See also Penn Gas Coal Co. *v.* Versailles Fuel Gas Co., 131 Pa. 522 (1890); McGregor *v.* Gas Co., 139 Pa. 230 (1891); Philadelphia Co. *v.* Freeport Borough, 167 Pa. 279 (1895); Waddington *v.* Allegheny Heating Co., 6 Pa. C. C. R. 96 (1888); Sewickley Borough *v.* Ohio Valley Gas Co., 6 Pa. C. C. R. 99 (1888).

have, possess, and enjoy all the rights, powers, privileges, property, immunities, and franchises which were of each [of] said companies: Provided, that before any such consolidation shall take place, the reasons therefor shall be submitted in writing to the governor of the Commonwealth, and the same shall be approved by him before the consolidation shall be consummated. Notice of the proposed consolidation, and the submission of the reasons therefor to the governor, shall be given by publication in a newspaper of general circulation, printed in the county where the general offices of the companies proposing to consolidate are situate. No consolidation shall be valid, unless made in the manner prescribed herein, and consolidations, except as herein provided, are hereby declared to be void, and any such shall work a forfeiture of the franchises of the offending companies, as well as the stock and property in the same of the stockholders consenting to such attempted consolidation, to the Commonwealth.[29]

Injury to Pipes and Property of Company.

943. If any person shall willfully and maliciously break, injure, and destroy any of the pipes, conduits, or other works or machinery of any natural gas company, or shall willfully and maliciously interfere with said pipes, conduits, or works, so as to interrupt the business of any such company, such person or persons shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine not exceeding two hundred dollars, or suffer an imprisonment not exceeding one year, or both, or either, in the discretion of the court.[30]

The customer of a corporation engaged in supplying gas for fuel cannot interfere with the stopcocks or curb-boxes of the company, located in the street or sidewalk, and turn off the gas at that point, until after reasonable notice to the company to shut off the gas from his premises, and its neglect or refusal so to do. An injunction will be granted to restrain a rival company, its agents and employees, from interfering with stopcocks, curb-boxes, service pipes, meters, and mixers, on the premises of a customer, who desires to

[29] Act of May 29, 1885, Sec. 17, P. L. 29.
[30] Act of May 29, 1885, Sec. 18, P. L. 29.

change from one company to the other, until reasonable notice has been given to the first company to shut off the gas, and failure on its part to do so.[31]

Taxation.

944. Corporations authorized and formed under this act shall pay into the state treasury for the use of the Commonwealth such taxes as now are or hereafter may be imposed upon corporations, under the general corporation or revenue laws of this Commonwealth.[32]

Abandoned Wells to be Plugged.

945. Whenever any well shall have been put down on lands of any company authorized by this act, for the purpose of exploring for, or producing gas, upon abandoning or ceasing to operate the same, the company shall, before drawing the casing, fill up the well with sand or rock sediment to the depth of at least twenty (20) feet above the gas-bearing rock, and drive a round seasoned wooden plug, at least two feet in length, equal in diameter to the diameter of the well below the casing, to a point at least five feet below the bottom of the casing, and immediately after the drawing of the casing shall drive a round wooden plug into the well at the point just below where the lower end of the casing shall have rested, which plug shall be at least three feet in length, tapering in form, and to be of the same diameter at the distance of eighteen inches from the smaller end of the diameter of the well below the point at which it is to be driven. After the plug has been properly driven, there shall be filled in on the top of the same sand or rock sediment to the depth of at least five feet.[33]

Penalty for Violation of Preceding Section.

946. Any company which shall violate the provisions of the preceding section shall be liable to a penalty of two hundred ($200) dollars, to be recovered as debts of like amount are by law recoverable.[34]

[31] Penna Gas Co. *v.* Warren & Chautauqua Gas Co., 3 Dist. Rep. 67 (1893).

[32] Act of May 29, 1885, Sec. 19, P. L. 29.

[33] Act of May 29, 1885, Sec. 20, P. L. 29.

[34] Act of May 29, 1885, Sec. 21, P. L. 29.

In an action to recover the penalty for not properly replugging an abandoned oil well, the defendant is not required to file an affidavit of defense.[35]

Owners of Adjoining Lands may Plug Wells at Expense of Company.

947. Whenever any company shall neglect or refuse to comply with the provisions of this act with regard to plugging wells, any owner of lands adjacent, or in the neighborhood of, such unplugged well, may enter and take possession of said abandoned well, and plug the same as provided by this act, at the expense of the company whose duty it may have been to plug the same.[36]

[35] Bartoe *v.* Guckert, 158 Pa. 124 (1893).
[36] Act of May 29, 1885, Sec. 22, P. L. 29.

CHAPTER LXVIII.

PIPE LINE AND PETROLEUM COMPANIES.

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Incorporation.

948. Companies may be organized under this act having the right to transport, store, insure, and ship petroleum, and for that purpose to lay down, construct, and maintain pipes, tubing, tanks, offices, and such other machinery, devices or arrangements as may be necessary to fully carry out that right, and also with the right to enter upon, take, and occupy such land and other property as may be requisite for the purposes of such corporation.[1]

[1] Act of June 2, 1883, P. L. 61. This section was an amendment of Clause 18 of the second subdivision of Section 1, of the General Corporation Act of April 29, 1874. By another act passed on June 22, 1883, Clause 18 of the second subdivision of Section 1 of the Act of 1874 was

Powers, Rights, and Duties.

949. All companies incorporated, or hereafter to be incorporated, under the provisions of the act to which this is a supplement, for the purpose of the transportation and storage of oil by means of pipe lines and tanks, for the public, shall have the power to take, hold, purchase, and transfer such real and personal property as the purposes of the corporation may require, not exceeding the amount limited by its charter, together with the right to appropriate and take lands, easements, and rights of way for locating and constructing steam pumps, tanks, pump houses, and offices, and laying down its pipes, or tubes, connections and branches, from any point or points in any of the counties in which petroleum is produced to any railroad, canal, navigable river, port or city within this Commonwealth, and for all necessary purposes of the corporation, including right to cross railroads, and the right to appropriate a right of way and locate its pipes or tubes, upon and over, under and across, any lands, waters, streams, rivulets, roads, turnpike roads, canal or other public highway, not, however, passing through any burying ground, or place of public worship, or any warehouse, mill, manufactory, store, or dwelling house, without the consent of the owner or owners thereof being first had and obtained: Provided, that when said pipe line is located through, over, under, or upon the streets, lanes, alleys, or highways, within the corporate limits

also amended to provide for the incorporation of companies for the purpose of driving and floating saw-logs, lumber, and timber. In the Act of June 22, 1883, no reference was made to pipe line and petroleum companies. By the Act of May 21, 1889, P. L. 259, Clause 18 of the second subdivision of Section 1 of the Act of 1874 was again amended, and the Act of June 22, 1883, was taken as the basis of amendment. In the Act of 1889 no reference was made to pipe lines or petroleum companies. The omission was clearly unintentional, and the subsequent legislation cannot be construed as a repeal of the first section of the Act of June 2, 1883: Lehigh Valley Coal Co. *v.* U. S. Pipe Line Co., 3 Dist. Rep. 70 (1893).

The Act of March 12, 1872, P. L. 22, Sec. 1, provided for the incorporation of companies for the transportation and storage of petroleum. This act has been superseded by the Act of June 2, 1883.

The Act of June 13, 1883, P. L. 93, forbidding the acquisition of competing lines, was repealed by the Act of March 6, 1895, P. L. 15. The governor's message approving the repealing act is printed in the Pamphlet Laws of 1895, p. 15.

of any city or borough, the consent of the municipal authorities to said location shall be first had and obtained, which consent said municipal authorities are hereby empowered to give upon terms to be agreed upon by said city, or borough authorities, and said corporation: And provided further, in case said pipes cross any railroad or canal the same shall be located under or above the same, so, however, as not to interfere with the use of the same: Provided further, that corporations organized under this act and its supplements shall not take a fee in any lands acquired under any of its provisions, except such as are acquired by actual purchase, and that upon the abandonment for the puposes of transporting oil, any lands taken by any company organized under the act to which this is a supplement and its supplements, said lands so taken, otherwise than by actual purchase, shall revert to the original owners or their successors: And provided further, that any pipe line, so laying its pipes under the provisions of this act, in occupying any lands cleared and used for agricultural purposes, shall bury the same at least twenty-four inches below the surface, and if any line of pipe shall be laid over or through any waste or woodland, which shall afterwards be changed from waste or woodland to farming land, then it shall be the duty of the pipe line company to immediately bury the pipe, to the depth of at least twenty-four inches, as aforesaid: Provided, that all pipe lines shall be laid above the flood lines, or beneath the bed, in crossing creeks and rivulets: And provided further, that any company laying a pipe under the provisions of this act shall be liable for all damages occasioned by leakage, breaking of pipes or tanks: Provided further, that all tanks erected for the storage or transportation of oil shall be protected, and surrounded by ditches and embankments, so that, in case said tanks should break or be broken, the oil stored cannot damage adjoining property.[2]

A pipe line company is a common carrier bound to receive and transport for all persons alike all oil entrusted to its care.[3]

[2] Act of June 2, 1883, Sec. 2, P. L. 62. The company's charter cannot be attacked in a collateral proceeding: Crescent Pipe Line, 2 D. R. 93 (1892).

[3] Giffin *v.* South West Pennsylvania Pipe Lines, 172 Pa. 580 (1896); Jones *v.* Tanner, 27 Pitts. L. J. 79 (1879).

The pump stations and oil tanks of a pipe line company necessary for the exercise of the company's franchises are not liable for local taxation.[4]

Assessment of Damages—Eminent Domain.

950. In all cases, when under the provisions of this act, said corporation is permitted to take lands or property for the public purposes of said corporation, or to acquire a right of way easement for the purposes of locating its pipes or branches over, upon, under, or across any lands, streams, rivulets, roads, turnpike roads, railroads, canals, or other highways, and the said corporation cannot agree with the owner or owners of any such lands, road, turnpike road, railroad, canal, or other highway, or franchise, for the compensation proper for the damage done, or likely to be done to or sustained by any such owner or owners of said waters, streams, land, road, turnpike road, railroad land, or other highways, which such corporation may enter upon, use in pursuance of the authority herein given, or by reason of the absence or legal incapacity of any such owner or owners, no such compensation can be agreed upon, the Court of Common Pleas of the proper county, on application thereto by petition, either by said corporation or the owner or owners, or any one in behalf of either, shall appoint seven discreet and disinterested freeholders, residents of the proper county, and appoint a time, not less than twenty (20), nor more than thirty (30) days thereafter for said viewers to meet at or upon the premises, where the damages are alleged to be sustained, or the property taken, of which time and place ten days' notice shall be given by the petitioner to the said viewers and the other party, and the said viewers, or any five (5) of them, having been first duly sworn, or affirmed, faithfully, justly, and impartially to decide and true report to make concerning all matters and things to be submitted to them, and in relation to which they are authorized to inquire in pursuance of the provisions of this act, and, having viewed the premises, they shall estimate and determine the quantity, quality, and value of said lands, streams, property, easement, franchise, or rights of way so taken, and shall award to the owner or owners

[4] Mellon Pipe Line *v.* Allegheny County, 3 Dist. Rep. 448 (1894).

thereof just compensation for the property taken, injured or destroyed by the construction or enlargement of such pipe lines, works, and improvements, which compensation shall be paid or secured as hereinafter provided, before such taking, injury, or destruction: Provided, that for any subsequent injury, taking or destruction of property, the owner or owners of the property taken, injured, or destroyed, shall have the right to recover full compensation for such taking, injury, or destruction, and an action for any subsequent injury, or taking, or destruction of property, may be brought within the county in which the damages are sustained, and the summons may be directed to the sheriff of the county in which the corporation defendant may have its principal place of business, and service may be made upon the president, secretary or other officer in charge of said principal office, to have the same effect as if the said corporation defendant was resident within the proper county, and make report thereof to the said court; and if any damages be awarded, and the report be confirmed by the said court, judgment shall be entered thereon; and if the amount thereof be not paid within thirty (30) days after the entry of such judgment, execution may then issue thereon, as in other cases of debt, for the sum so awarded; and the costs and expenses so incurred shall be defrayed by the corporation; and each of said viewers shall be entitled to two dollars and fifty cents ($2.50) per day, for each day necessarily employed in the performance of the duties herein prescribed, to be paid by such corporation. In all cases when the parties cannot agree upon the amount of damages claimed, or by reason of the absence or legal incapacity of such owner or owners, no such agreement can be made, either for lands, streams, waters, water rights, franchises, rights of way, the corporations shall tender a bond, with at least two sufficient sureties, to the parties claiming, or entitled to any damages, or to the attorney or agent of any person absent, or to the guardian or committee of any one under legal incapacity, the condition of which shall be that the said corporation will pay such amount of damages as the party shall be entitled to receive, after the same shall have been agreed upon by the parties, or assessed in the manner provided for by this act: Provided, that in case the party or parties claiming damages refuse, or do not accept the bond tendered, the said corporation shall then give the party a written notice of the time

when the same will be presented for filing in court, and thereafter the said corporation may present said bonds to the Court of Common Pleas of the county where the lands, streams, waters, rivulets, roads, railroads, turnpike roads, canals, or other highways are; and if the sureties and the amount of the bond be approved, the bond shall be filed in said court for the benefit of those interested, and recovery may be had thereupon for the amount of damages assessed, if the same be not paid, or cannot be made by execution on the judgment in the issue framed to try the question. The viewers provided for in this section may be appointed before or after the entry for constructing said work, and after the filing of the bond hereinbefore provided for, and upon the report of said viewers, or any three of them, being filed in said court, either party, within thirty (30) days thereafter, may file his, her, or their appeal from said report to said court; after such appeal either party may put the cause at issue in the form directed by said court, and the same shall be tried by said court and a jury, and after final judgment either party may have a writ of error thereto from the Supreme Court, in the manner prescribed in other cases; the said court shall have power to order what notices shall be given of the proceedings, and may make all such orders connected with the same, as may be deemed requisite; if any exceptions be filed with any appeals to the proceeding, the same shall be speedily disposed of, and if allowed, a new view shall be ordered; and if disallowed, the appeal shall proceed as before provided: Provided further, that when the term owner is used in the foregoing section to this act, or in this act in reference to an effort to agree with, or to the tender of a bond to, or service of notice upon the owner of roads, railroads, turnpike roads, canals, or other highways, the same shall be taken to mean the officers in charge of said road, railroad, turnpike road, canal, or other public highways, on whom service of process could be made in any action at law or in equity: Provided, that all companies, organized under this act, shall have their terminus in Pennsylvania.[5]

After the termini are fixed by the proper action of the

[5] Act of June 2, 1883, Section 3, P. L. 63. See Miller *v.* Southwest Penn. Pipe Lines, 2 D. R. 602 (1891).

company, they cannot be changed by the company of its own motion, and at its own pleasure.[6]

The damages are not limited by the amount of the bond.[7]

The pipe line company's use of the land is not exclusive of that of the owner, and it has no right to fence the land above the buried pipe.[8]

A pipe line company may enter upon lands held for the employment, maintenance, and support of the poor on tender and approval of a proper bond.[9]

In a proceeding against a pipe line company to recover damages for the construction of a pipe line across a farm, a witness is competent to testify as to damages who has knowledge of the land, and knew of the prices brought by other land in the neighborhood which had pipe lines across them.[10]

Evidence is admissible as to the amount of land disturbed by the pipe line, and the injury to the crops.[11]

Where a pipe line company allows oil to escape and percolate through another's land, and destroy his springs, the company is liable for injury.[12]

Regulation of Companies.

951. Every corporation, company, association, person, or persons, who are now engaged, or shall hereafter engage, or continue, in the business of transporting, or storing crude or

[6] Lehigh Valley Coal Co. *v.* United States Pipe Line Co., 3 Dist. Rep. 70 (1893). See Bollinger *v.* Southern Pipe Line Co., 2 D. R. 604 (1892), as to what constitutes a taking. See also Tannehill *v.* Phila. Co., 2 Super. Ct. 159 (1896).

[7] Michael *v.* Crescent Pipe Line Co., 159 Pa. 99 (1893).

[8] Sickler *v.* United States Pipe Line Co., 3 Dist. Rep. 62 (1893).

[9] Southwest Pennsylvania Pipe Line *v.* Poor Directors, 1 Pa. C. C. R. 460 (1886).

[10] Pennock *v.* Crescent Pipe Line Co., 170 Pa. 372 (1895); Mewes *v.* Crescent Pipe Line Co., 170 Pa. 364 (1895); 170 Pa. 369 (1895); Michael *v.* Crescent Pipe Line Co., 159 Pa. 99 (1893); Wallace *v.* Jefferson Gas Co., 147 Pa. 205 (1892) ; Tannehill *v.* Phila. Co., 2 Super. Ct. 159 (1896) ; Denniston *v.* Phila. Co., 1 Super. Ct. 599 (1896).

[11] Wallace *v.* Jefferson Gas Co., 147 Pa. 205 (1892).

[12] Hauck *v.* Tidewater Pipe Line Co., 153 Pa. 366 (1893). See Denniston *v.* Phila. Co., 1 Super. Ct. 599 (1896).

refined petroleum, by means of pipe line or pipe lines, or storage by tanks, shall conduct such business in conformity with and subject to the provisions of this act.[13]

Issue and Surrender of Receipts for Petroleum.

952. No receipt, certificate, accepted order, or other voucher shall be issued, or put in circulation, nor shall any order be accepted, or liability incurred for the delivery of any petroleum, crude or refined, unless the amount of such petroleum represented in or by such receipt, certificate, accepted order, or other voucher, or liability, shall have been actually received by and shall then be in the tanks and lines, custody, and control of the corporation, company, association, person or persons issuing or putting in circulation such receipt, certificate, accepted order, or voucher, or incurring such liability.

No duplicate receipt, certificate, accepted order, or other voucher shall be issued or put in circulation, or any liability incurred for any petroleum, crude or refined, while any former liability remains in force, or any former receipt, certificate, accepted order, or other voucher, shall be outstanding and uncancelled, except in case such original paper shall have been lost, in which case a duplicate plainly marked "duplicate" upon the face, and dated and numbered as the lost original was dated and numbered, may be issued.

No receipt, voucher, accepted order, certificate, or written evidence of liability of such corporation, association, company, person, or persons, on which petroleum, crude or refined, has been delivered, shall be re-issued, used, or put in circulation.

No petroleum, crude or refined, for which a receipt, voucher, accepted order, certificate, or liability incurred, shall have been issued or put in circulation, shall be delivered, except upon the surrender of the receipt, voucher, order, or liability representing such petroleum, except upon affidavit of loss of such instrument made by the former holder thereof.

No duplicate receipt, certificate, voucher, accepted order,

[13] Act of May 22, 1878, Section 1, P. L. 104. The provisions of the Act of 1878 applies to companies organized under the Act of June 2, 1883, P. L. 62, inasmuch as the act by its express terms is made to apply to companies which shall "hereafter" engage in transporting and storing petroleum by means of pipe line or tanks.

or other evidence of liability, shall be made, issued, or put in circulation, until after notice of the loss of the original, and of the intention to apply for a duplicate thereof, shall have been given, by advertisement, over the signature of the owner thereof in at least four successive issues of a daily or weekly newspaper published in the county where such duplicate is to be issued.

Every receipt, voucher, accepted order, certificate, or evidence of liability, when surrendered, or the petroleum represented thereby delivered, shall be immediately cancelled, by stamping or puncturing the same across the face in large and legible letters with the word "cancelled," and giving the date of such cancellation, and it shall then be filed and preserved in the principal office of such corporation, association, company, person, or persons.[14]

Written Order of Owner When Necessary.

953. No corporation, association, company, or the officers or agents thereof, or any person or persons engaged in the transportation or storage of petroleum, crude or refined, shall sell or encumber, ship, transfer, or in any manner remove or procure, or permit to be sold, encumbered, shipped, transferred, or in any manner removed from the tanks or pipes of said corporation, association, company, person or persons engaged in the business aforesaid, any petroleum, crude or refined, without the written order of the owner or owners thereof.[15]

Exhibition of Monthly Statements.

954. Any corporation, association, company, and the officers, agents, managers, and superintendents thereof, and any person or persons that are now or may hereafter be engaged, or continue in the business of transporting by pipe lines, or storing crude or refined petroleum, shall, on or before the tenth day of each month, make, or cause to be made, and posted in the principal business office where such corporation, company, association, person, or persons is, or are, or may be engaged in business, in an accessible and convenient place, for the examination thereof by any person desiring such examination, and shall keep so posted continuously until the next succeeding statement is so posted, a

[14] Act of May 22, 1878, Sec. 2, P. L. 104.
[15] Act of May 22, 1878, Sec. 3, P. L. 104.

statement plainly written or printed, signed by the officer, agent, person, or persons having charge of the pipes and tanks of said corporation, company, association, person, or persons, and also by the officer or officers, person or persons, having charge of the books and accounts thereof, which statement shall show in legible and intelligible form the following details of the business:

First. How much petroleum, crude or refined, was in the actual and immediate custody of such corporation, company, association, person, or persons, at the beginning and close of the previous month, and where the same was located or held, describing in detail the location and designation of each tank, or place of deposit, and the name of its owner:

Second. How much petroleum, crude or refined, was received by such corporation, company, association, person or persons, during the previous month:

Third. How much petroleum, crude or refined, was delivered by such corporation, company, association, person or persons, during the previous month:

Fourth. For how much petroleum, crude or refined, such corporation, company, association, person, or persons, were liable for the delivery or custody of to other corporations, companies, associations, or persons, at the close of such month:

Fifth. How much of such liability was represented by outstanding receipts or certificates, accepted orders, or other vouchers, and how much was represented by credit balances.

The statement so required to be made shall also be sworn to by said officers, agents, person, or persons, before some officer authorized by law to administer oaths, which oath shall be in writing, and shall assert the familiarity and acquaintance of the deponent with the business and condition of such corporation, company, association, person, or persons, and with the facts sworn to, and that the statements made in the said report are true:

Sixth. That all the provisions of this act have been faithfully observed and obeyed during the said previous months.[16]

Description of Amounts in Statement.

955. All amounts in the statements required by this act when the petroleum is handled in bulk, shall be given in bar-

[16] Act of May 22, 1878, Sec. 5, P. L. 104. There is no fourth section in the act. See Boyle *v.* Smithman, 146 Pa. 255 (1892).

rels and hundredths of a barrel, reckoning forty-two gallons to each barrel, and when such petroleum is handled in barrels or packages the number of such barrels or packages shall be given, and such statements shall distinguish between crude and refined petroleum, and give the amount of each.

Every corporation, company, association, person or persons, engaged in the business aforesaid, shall at all times have in their tanks and pipes an amount of merchantable oil equal to the aggregate of outstanding receipts, accepted orders, certificates, vouchers, acknowledgments, evidences of liability, and credit balances upon the books thereof.[17]

Punishment for Violating Act.

956. Any corporation, association, company, or officers or agents thereof, or person or persons, who shall make or cause to be made, sign or cause to be signed, issue or cause to be issued, put in circulation or cause to be put in circulation, any receipt, accepted order, certificate, voucher, or evidence of liability, or shall sell, transfer, or alter the same, or cause such sale, transfer or alteration, contrary to the provisions of this act, or shall do, or cause to be done, any of the acts prohibited by the second section of this act, or omit to do any of the acts by said section directed, shall be guilty of a misdemeanor, and on conviction thereof shall be sentenced to pay a fine of not exceeding one thousand dollars and undergo imprisonment not less than ten days, nor exceeding one year.[18]

Any corporation, association, company, or officer or agent thereof, or person or persons, who shall sell, encumber, transfer, or remove, or cause, or procure to be sold, transferred, or removed, from the tanks or pipes of such corporation, company, association, person, or persons, any petroleum, crude or refined, without the written consent of the owner or owners thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of one thousand dollars, and undergo an imprisonment not less than ninety days and not exceeding two years.[19]

Any corporation, association, company, person, or persons, engaged in the business of transporting by pipe lines or stor-

[17] Act of May 22, 1878, Sec. 6, P. L. 104.
[18] Act of May 22, 1878, Sec. 7, P. L. 104.
[19] Act of May 22, 1878, Sec. 8, P. L. 104.

ing petroleum, crude or refined, and each and every officer, or agent of such association, corporation, company, person or persons, who shall neglect or refuse to make the report and statement required by the fifth section of this act, within the time and in the manner directed by said section, shall forfeit and pay the sum of one thousand dollars, and in addition thereto the sum of five hundred dollars for each day after the tenth day of the month that the report or statement required by said Section 5 shall remain unposted as therein directed.[20]

Certificates to be Negotiable.

957. Accepted orders and certificates for petroleum, issued by any corporation or partnership association engaged in the business of transporting and storing petroleum in this State shall be negotiable, and may be transferred by indorsement, either in blank or to the order of another, and any person to whom the said accepted orders and certificates shall be so transferred shall be deemed and taken to be the owner of petroleum therein specified.[21]

Must Permit Inspection of Business.

958. Every firm, association, or corporation within this Commonwealth, engaged in the business of storing and transporting crude or refined petroleum by means of pipe lines, shall, on or before the first day of July, next ensuing, and every firm, association, or corporation that may hereafter engage in said business, shall, before engaging therein, file in the office of the secretary of the Commonwealth a writing authorizing any person or persons who may be appointed to inquire into the condition of such firm, corporation, or association under existing law or this act, or any law that may be hereafter enacted, to enter upon and have free access to the premises of such firm, association, or corporation, whether the same may be in this or some other State, or partly in this and partly in some other State or States, for the purpose of inspecting and gauging the petroleum, crude or refined, that may be in the custody of said firm, association, or corporation, and of examining the books, accounts, and papers thereof relative to oil in its custody, and liability therefor,

[20] Act of May 22, 1878, Sec. 9, P. L. 104. See Act of July 5, 1883, Sec. 1, P. L. 186, *infra*.

[21] Act of June 20, 1883, P. L. 127.

including oil owned by said firm, association, or corporation. And the said writing shall extend to and embrace full permission to use the tools, implements and appliances of such firm, association, or corporation, for the purposes of making such inspection and gauge, and shall grant full and absolute authority for the purposes hereof, and shall remain good and valid so long as such firm, association, or corporation continue to do business in this State.[22]

Power and Duties of Examiner.

959. The person or persons who may be appointed under any law of this Commonwealth, to make such examination, gauge, and inspection, shall produce to the secretary of this Commonwealth a certificate attested by satisfactory proof of his or their appointment as such examiner or examiners, whereupon the secretary of the Commonwealth shall issue to such examiner or examiners a certified copy of the writing aforesaid, accompanied by a certificate countersigned by the governor, that the person or persons therein named have been duly appointed to make such examination, inspection, and gauge as aforesaid, and to exercise, under the appointment of this Commonwealth, the authority delegated under the writing aforesaid, for a period therein named, which shall not exceed thirty days; and it shall be the duty of any such firm, association, or corporation, upon the production of such certificate and certified copy aforesaid to any of its officers or agents, to give, without delay, to such examiner or examiners free access to its offices and such books, papers, accounts, as show the amount of oil in its custody, and for which it is liable, including oil owned by said firm, association, or corporation and its tanks, stations, and other property, and to furnish information regarding the same. But if such firm, association, or corporation, its officers or agents, shall refuse or deny access to or entry upon the premises of such firm, association, or corporation, or shall in any wise hinder, obstruct, or prevent said examiner or examiners from making an examination, gauge, and inspection of the books, papers, accounts aforesaid, and of the tanks and pipes of said firm, association, or corporation, or shall willfully withhold information regarding the same, or deny the use of its tools and appliances for the purpose of making such examina-

[22] Act of July 5, 1883, Sec. 1, P. L. 186.

tion, inspection, and gauge, such refusal, hindrance, denial, or obstruction shall work a forfeiture of the charter of any such corporation chartered by this Commonwealth, or of the right to do business in this Commonwealth, of any such firm, or association, or foreign corporation, and in such case the right of such foreign corporation to bring suits in the courts of this State shall cease. In all cases where the tanks, pipes, books, offices, accounts, and petroleum to be examined and gauged are situated in this State, it shall only be necessary for the examiner or examiners to produce to such firm, association, or corporation, or to any of its officers or agents, a certificate of the court, or other lawful authority, appointing him or them, showing him or them to be the duly accredited and lawful examiner or examiners.[23]

Petition by Owners to Appoint Examiners.

960. The owners of oil which is in the custody of any such firm, association, or corporation, not less in the aggregate than 2 per centum of the amount of oil in the custody of such firm, association, or corporation, as shown by its last preceding monthly statement, may, at any time, but not oftener than once in three months, present their petition to the Court of Common Pleas of the county wherein such firm, association, or corporation may have its principal office, and of any foreign corporation to the Court of Common Pleas in any county in which said corporation may be doing business, or to any law judge of said court in vacation, setting forth, under oath, their ownership as aforesaid, and desire for the appointment of examiners for the purposes of this act, whereupon the court, or any judge thereof in vacation, shall forthwith appoint such number of impartial, disinterested, and competent persons as may be necessary, not exceeding twenty-five, as examiners, one of whom shall be designated as chief, and the others shall be subordinates, and shall fix the amount of their compensation, which shall not exceed five dollars per day.[24]

Order of Court.

961. The court or judge by order shall direct and empower such examiners, under the supervision of their chief, to im-

[23] Act of July 5, 1883, Sec. 2, P. L. 187.
[24] Act of July 5, 1883, Sec. 3, P. L. 187.

mediately inspect and measure all the petroleum, crude or refined, in the custody of any such firm, corporation, or association named in said petition, on the day or days of inspection, and to examine the books of such firm, association, or corporation relating to the issue and cancellation of receipts, certificates, accepted orders, vouchers, or evidences of liability, and to its own accounts with persons, companies, or corporations with whom it deals in the receipt or delivery of crude or refined petroleum. Such examiners, when appointed, shall immediately be sworn before any authorized officer, to perform his duties with fidelity and according to law, which oath shall be reduced to writing, signed and filed with the prothonotary, and they shall, then, under supervision of the chief examiner, make immediate examination, gauge, and inspection as required by said petition and order, and by this act.[25]

Duty of Such Examiners.

962. Upon the completion of such inspection, examination, and measurement, it shall be the duty of the examiner or examiners, or in the event of the death, resignation, or declination, or inability to act of any of them, then the others, or any of them within thirty days after their appointment, to make to the court appointing them, a written, signed, and sworn report of such examination, inspection, and measurement, and file the same of record with the prothonotary thereof, which report shall show:

First. How much merchantable, and also how much unmerchantable petroleum, crude or refined, they found in the tanks and lines of such firm, association, or corporation, and where the same was located or held, by description of tanks, also the percentage of merchantable oil, mingled with the B. S. and sediment.

Second. For the custody or delivery of how much crude or refined petroleum they found such firm, association, or corporation to be liable at the same date.

Third. How much of such liability was represented by outstanding receipts, accepted orders, certificates, vouchers, or evidences of liability, and how much by credit balances.[26]

[25] Act of July 5, 1883, Sec. 4, P. L. 188.
[26] Act of July 5, 1883, Sec. 5, P. L. 188.

Penalty for False Report.

963. Any examiner appointed as aforesaid, who shall make any false examination, inspection, measurement, or report, or shall make known, directly or indirectly, to any person, any information he may become possessed of in the course of his examination, inspection, and measurement, except by means of his report made and filed in accordance with this act, or who shall receive, directly or indirectly, any fee, reward, or benefit, or the promise of any fee, reward, or benefit, other than that provided by this act for the performance or non-performance of any duty or thing contemplated by this act, or connected with his said employment, shall be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine of one thousand dollars, and to imprisonment not less than three months, nor more than two years.[27]

Penalty for Obstructing Examiners.

964. Any officer, agent, manager, superintendent, or employee of any such firm, corporation, or association as aforesaid, who shall neglect or refuse, after demand made, to give to any authorized examiner full and free access to any and all offices, pipes, tanks, accounts, books, and vouchers as aforesaid, or deny to him the use of any tools or appliances required by him in pursuance of his appointment and this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand dollars, and to imprisonment not exceeding one year.[28]

Fines.

965. All fines recovered from any person under this act, and all penalties, shall be paid to the proper officer for the use of the county wherein such suit is brought or prosecution instituted.[29]

Expenses and Compensation.

966. The examiners shall also file with their report an itemized and sworn statement of the entire expense incurred in making such examination, inspection, and gauge, includ-

[27] Act of July 5, 1883, Sec. 6, P. L. 189.
[28] Act of July 5, 1883, Sec. 7, P. L. 189.
[29] Act of July 5, 1883, Sec. 8, P. L. 189.

ing their compensation, to be taxed as costs in other cases, and if allowed and approved by the court, the same shall be paid by the firm, corporation, or asociation named in the petition, within twenty days, and upon its failure to do so, judgment may be entered forthwith in favor of the persons performing the services, for the amount due them, and against the said firm, corporation, or association upon which execution may at once issue.[30]

Inspector of Oils.

967. Nothing contained in this act shall be construed to interfere with any law authorizing the appointment of an inspector of oils.[31]

Distribution of Purchase-Money.

968. That on the confirmation of the sale of such pipe line by the court, and the payment of purchase-money into court (or the cash payment fixed by the court), also the earnings of such pipe line [from] escheated as provided in Section 2 of this act, the court shall appoint an auditor to distribute the same, which said distribution shall be as follows: First, the cost of the suit under which the sale took place, and costs of distribution; second, the innocent stock and bondholders shall receive the market value of their stock and bonds, and interest thereon: Provided, innocent stock and bondholders shall be construed to mean those who neither directly or indirectly, aided or consented, either by their acts or silence in the violation of Sections 1 and 2 of this act; third, the remainder shall be awarded to the Commonwealth of Pennsylvania.[32]

When Liens Invalid.

969. All mortgages, liens, or incumbrances placed upon any pipe line by any corporation, association, partnership, or individual, after the violation of the provisions of this act, or any mortgage, lien, or incumbrance placed upon any pipe line by any corporation, association, partnership, or indi-

[30] Act of July 5, 1883, Sec. 9, P. L. 189.

[31] Act of July 5, 1883, Sec. 10, P. L. 189.

[32] Act of June 13, 1883, Sec. 5, P. L. 94. There is no fourth section in the act.

vidual, having in view the violation of the provisions of this act, shall be, and they are hereby declared null and void.[33]

Powers of Court to Ascertain Facts.

970. The courts shall have power to summon the officers of any such corporation, association, or partnership, or either of them, or any individual by subpœna, citation, or otherwise, as the said court shall direct, to appear before said court and produce all, or any of its, their, or his books and papers, and to examine them or him, upon oath, to ascertain whether he, they, or any of them have violated any of the provisions of this act, and shall have power to enforce his or their appearance, by attachment, as in case of other witnesses, or the said court may direct to be filed a bill of discovery in the said court, against the officers, directors, trustees, managers, or individuals owning, managing, or controlling any such pipe line, or either of them, which said bill of discovery, the defendant or defendants therein, shall answer under the compulsion usual in such cases, and the evidence so taken, and his, or their answers, may be used in the said proceedings to assert the rights of the Commonwealth.[34]

Rights and Duties of Purchasers.

971. The purchaser or purchasers of any pipe line, sold under the provisions of this act, shall be entitled to all the franchises, rights, and privileges enjoyed by such pipe line at and immediately before the violation of the provisions of this act. And it shall be the duty of such purchaser or purchasers to notify the secretary of the Commonwealth and the auditor-general of such purchase, and the names and residence of the person or persons purchasing the same, within thirty days from the confirmation of such sale by the court. And upon the reorganization of such corporation, association, or partnership (which shall be done under existing law, and within ninety days from and after the confirmation of such sale by the court), notice of such reorganization shall forthwith be given to the secretary of state and the auditor-general: Provided, that all such reorganized corporations, associations, or partnerships shall be subject to all the provisions

[33] Act of June 13, 1883, Sec. 6, P. L. 94.
[34] Act of June 13, 1883, Sec. 7, P. L. 94.

of the Constitution and laws of the Commonwealth governing such corporations, associations, and partnerships.[35]

Petroleum Mining Companies may Deal in Stock of Other Companies.

972. Corporations incorporated under the provisions of the act entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29, A. D. 1874, for the purpose of mining for petroleum, may subscribe for, purchase, hold, and dispose of stocks and bonds of any other corporation, incorporated under the said act for the same purpose, and may also subscribe for, purchase, hold, and dispose of stocks and bonds of any corporation incorporated under the provisions of the act entitled "An act to provide for the incorporation and regulation of natural gas companies," approved May 29, A. D. 1885. And may also subscribe for, purchase, hold, and dispose of stocks and bonds in any corporations of other States incorporated for similar purposes: Provided, that the amount of such stock held by any corporation, together with the amount of its capital stock, shall not exceed in the aggregate the amount to which the capital of such corporations is limited by the thirty-ninth section of the act to which this is a supplement.[36]

[35] Act of June 13, 1883, Sec. 8, P. L. 94.
[36] Act of May 3, 1889, P. L. 76.

CHAPTER LXIX.

REAL ESTATE COMPANIES.

973. Incorporation.
974. Capital Stock—Powers.
975. Powers of Real Estate, Hotel, Drove Yard, and Other Companies.

Incorporation.

973. [Corporations may be formed for] the purchase and sale of real estate, or for holding, leasing, and selling real estate, for maintaining or erecting walls, or banks, for the protection of low lying land.[1]

The purposes of a real estate company cannot exceed the powers enumerated in the Act of April 29, 1874, Sections 35 and 36, as amended by the Act of April 17, 1876, P. L. 30.

A certificate for a land company stated the purposes of the corporation to be as follows: "The said corporation is formed for the purpose of purchasing real estate, improved or unimproved, [laying out and dividing into streets, alleys and building lots, and] improving the same, and of holding and leasing and selling [and dedicating or donating] the same, in such parts and parcels, and on such terms as may be determined by the association." The secretary of State directed that the portions in brackets should be stricken out before letters-patent should issue.[2]

Capital Stock—Powers.

974. The capital stock of corporations for the purchase and sale of real estate, or for holding, leasing, and selling real

[1] Act of April 29, 1874, Sec. 2, Sub-section 16. Re-enacted by Act of June 25, 1895, P. L. 295.

[2] North Fifth St. Mutual Land Association, 8 Pa. C. C. R. 17 (1890).

estate, and for maintaining, or erecting and maintaining walls or banks for the protection of low lying lands, shall consist in the aggregate at no time of more than six hundred thousand dollars, to be divided into shares of fifty dollars each; the said corporations shall have the right to purchase, take, hold, and enjoy real estate, in fee simple, on lease or upon ground rent, as well that already purchased or acquired, as that hereafter purchased or acquired, to improve, lease, mortgage, and sell the same in such parts and parcels, and on such terms as to time of payment as they may determine, and to convey the same to the purchaser, in fee simple, or for any less estate, or upon ground rents, and in like manner to mortgage, sell, convey, or extinguish any ground rent reserved out of any real estate so sold; and may maintain or erect and maintain walls, or banks of stone, earth or other material, for the protection of meadow and low lying lands from the encroachments of water: Provided, that the quantity of real estate held at any one time, in cities or boroughs, shall not exceed five hundred acres, and outside thereof shall not exceed ten thousand acres, but any number of acres desired may be protected from encroachment by water.[3]

Powers of Real Estate, Hotel, Drove Yard, and Other Companies.

975. Companies incorporated under the provisions of this act, or similar companies already incorporated and accepting the same, for holding, leasing, and selling real estate, or for the establishment and maintenance of a hotel, or boarding house, or opera and market house, hotel and drove yard, or both, any or either, shall have the right and power to take, receive, hold, and enjoy, either by conveyance, [in] fee simple or for any less estate, or upon ground rent, or for both, all the buildings, lots of lands, premises, [and] appurtenances necessary to the successful maintenance and carrying on of such business; shall have the power to execute the necessary and proper covenant for securing the payment of ground rent on any of such lands and premises; shall have power to sell and convey, let or lease, all or any parts of said lots, or the tenements and buildings thereon erected, either for cash or on ground rent, or partly for cash and partly on ground

[3] Act of April 29, 1874, Sec. 35, as amended by Act of April 17, 1876, Sec. 9, P. L. 36.

rent, and shall have power to hold or erect such buildings, fixtures, and appurtenances, and procure such furniture and equipments as may be necessary for the success of its business; and the said corporation may borrow money, in the manner provided in Section 13 of this act, to an amount equal to the capital stock of the company paid up, and secure the same by mortgage upon the said lots, buildings and fixtures, and appurtenances.[4]

[4] Act of April 29, 1874, Sec. 36, as amended by Act of April 17, 1876, Sec. 10, P. L. 36.

CHAPTER LXX.

REFRIGERATION COMPANIES.

976. Incorporation. 977. Powers.

Incorporation.

976. [Corporations may be formed for] the establishment of a system of refrigeration by which the public may obtain materials for refrigerating purposes through pipes or conduits from central stations.[1]

Powers.

977. Any company incorporated under the provisions of the act to which this is a supplement, for the purpose of establishing a system of refrigeration in the city, borough, or district in which it may be located, shall have authority to establish such system of refrigeration, and supply materials through pipes or conduits from central stations for refrigerating purposes to such persons, partnerships, and corporations residing therein and adjacent thereto as may desire the same, at such price or prices as may be agreed upon; and also to make, erect, and maintain therein the necessary buildings, machinery, and apparatus for manufacturing such material and distributing the same, with the right to enter upon any public street, lane, alley, or highway, for the purpose of laying down, maintaining and using pipes and conduits necessary therefor, and altering, inspecting, and repairing the same, doing as little damage to said streets, lanes, alleys, and highways, and obstructing the free use thereof as little as possible, and subject to such reasonable regulations as the councils of said city, borough, or district may adopt in regard to grades, or for the protection and convenience of public travel over the same.[2]

[1] Act of June 24, 1895, Sec. 1, P. L. 253.

[2] Act of June 24, 1895, Sec. 2, P. L. 253.

CHAPTER LXXI.

RESERVOIR, DRIVING AND FLOATING LOGS, TIMBER AND LUMBER COMPANIES.

978. Incorporation.
979. Powers.
980. Improvements to be for Public Benefit—Tolls.
981. Assessment of Damages—Eminent Domain.
982. Bond.
983. Right to Take Tolls.
984. Report to be Made to Auditor-General of Number of Logs Rafted.

Incorporation.

978. [Corporations may be incorporated for] the storage, transportation, and furnishing of water with the right to take rivulets and land, and erect reservoirs for holding water for manufacturing and other purposes, and for the creation, establishing, furnishing, transmission, and using of water power therefrom, the construction of dams in any stream, and the driving and floating of saw logs, lumber, and timber on and over any stream, not exceeding thirty-five miles in length, and the heads of all streams not exceeding thirty-five miles in length from their source, by the usual methods of driving and floating logs, timber, and lumber on streams, and so as not to obstruct the descending navigation by rafts and boats.[1]

Powers.

979. Corporations organized for the purpose of erecting reservoirs for the storage of water, construction of dams, transmission of power, and the driving and floating of logs, timber, and lumber on streams not exceeding thirty-five

[1] Act of June 22, 1883, Sec. 1, P. L. 156, as amended by the Act of May 21, 1889, Sec. 1, P. L. 260, and as subsequently amended by the Act of June 10, 1893, Section 1, P. L. 414.

miles in length, from their source, shall have the power to clear out, improve, and use any stream, or the head of any stream, not exceeding in length thirty-five miles from its source, to purchase dams and erect new dams thereon, may straighten, deepen, crib, and widen such stream, or the head of any stream, for the distance aforesaid as they deem proper, and may generally use and manage the streams and the head of streams for the distance aforesaid and their improvements thereon, for the floating of logs, lumber, and timber thereon, by both natural and artificial floods, in their discretion, but in such manner as not to obstruct the descending navigation by rafts and boats: Provided, that in case where the heads of streams more than thirty-five miles in length are improved under the provisions of this act, no tax or tolls shall be charged on the timber or logs passing through, banked, or floated from below such improvements: Provided further, that the corporation owning such improvements shall not be required to operate or furnish the use of such improvements for driving or floating timber or logs, unless the owners of such timber or logs consent to pay the tolls provided for in this act: Provided further, that a majority of the stock in any such corporation shall at all times be held by the persons owning lands drained by such streams.[2]

Improvements to be for Public Benefits—Tolls.

980. The improvements of corporations organized for the floating of logs, lumber, and timber as aforesaid, and the use of the streams so to be controlled by them, shall be for the public benefit, so that all persons shall have the right to have their logs, lumber, and timber floated in such streams, with the aid of said improvements, subject, nevertheless, to the payment of such reasonable tolls and charges therefor as said corporation, or its proper officers, may require, not in any case to exceed ten cents per thousand feet board measure: And provided, that the control of such improvements shall, at all times, be in the hands of said corporations.[3]

[2] Act of June 22, 1883, Section 2, P. L. 156, as amended by the Act of May 21, 1889, Sec. 1, P. L. 260, and as further amended by the Act of June 10, 1893, Section 2, P. L. 414.

[3] Act of June 22, 1883, Sec. 3, P. L. 157. See Genesee Fork Imp. Co. *v.* Ives, 144 Pa. 114 (1891); Bennett's Branch Imp. Co.'s Ap., 65 Pa. 242 (1870), as to the right to take tolls.

Assessment of Damages—Eminent Domain.

981. Companies incorporated for the purpose of floating and driving logs, timber, and lumber on and over any stream shall, before commencing the driving or floating on or over any stream, agree with the owner or owners of any mill or sawmill dams upon such stream or streams, and the owners of land adjoining such streams, for compensation for any damages that may be occasioned by reason of the erection of splash dams on said streams, and the driving and floating of logs, timber, and lumber thereon; and when such company cannot agree with the owner or owners for such dams, or riparian owners, for the damages aforesaid, by reason of incapacity or otherwise, then the damages done, or likely to be done, to such owner or owners, shall be assessed, and the right of possession and use of the such stream or streams acquired under the forty-first section of the act to which this is a supplement.[4]

Bond.

982. Before any such corporation for the floating of logs, lumber, and timber shall enter upon and exercise any control over any stream under this act, they shall file in the Court of Common Pleas of the proper county a bond in such sum and with such sureties as shall be approved by the said court, or by the president judge thereof in vacation, conditioned to indemnify all and every person whose property may be injured by reason of the construction and operation of the improvements of said corporation.[5]

Nothing in this act contained shall be held to authorize the taking or injuring of private property for a private use, nor to affect in any way any suit at law or in equity now pending.[6]

Right to Take Tolls.

983. From and after the passage of this act it shall not be lawful for any boom company, incorporated by any law of

[4] Act of June 22, 1883, Sec. 4, P. L. 158.

[5] Act of June 22, 1883, Sec. 5, P. L. 158.

[6] Act of June 22, 1883, Sec. 6, P. L. 158.

If the company files a bond it need not agree with the individual riparian owner, or enter security for the payment of damages under the provisions of Section 4 of the act: Genesee Fork Imp. Co. *v.* Ives, 144 Pa. 114 (1891).

this Commonwealth, to charge or collect upon any timber, logs, or lumber, of any description, boomed, rafted, or in any way secured or taken care of by said boom company, a larger sum in the aggregate than one dollar per thousand feet, board measure, which said sum of one dollar shall include all and every charge or charges for toll or boomage, rafting, warps, wedges, and for every other kind of material used and labor and service performed by said boom company in the discharge of its duties and exercise of its functions or powers or privileges as a boom company, in regard to the said timber, logs, or lumber so boomed, rafted, or in any way secured or taken care of by the said boom company: Provided, that this act shall only apply to those boom companies in whose char[ters] the right to regulate their tolls has been expressly reserved to the legislature.[7]

Report to be Made to Auditor-General of Number of Logs Rafted.

984. All boom companies, now or hereafter incorporated, be and they are hereby required to report, under oath or affirmation of the president and secretary, or treasurer, the number of logs annually rafted by said companies, said returns to be made on or before December 31 of each year; and the said companies shall pay to the Commonwealth annually, on or before said day, a tax of one hundred dollars on each one hundred thousand of said logs, and in that proportion for any less or greater number, the first return and payment as aforesaid to be made on or before December 31, 1870; and said companies making such return and payment are hereby excepted from the provisions of existing acts of assembly imposing taxes on them for State purposes.[8]

[7] Act of June 5, 1876, Sec. 1, P. L. 211.
[8] Act of April 6, 1870, Sec. 1, P. L. 52.

CHAPTER LXXII.

ROAD COMPANIES.

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985. Incorporation.
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987. Powers of Directors.
988. May Enter Upon Lands.
989. Accounts.
990. Construction of Bridges and Roads.
991. Materials of Construction to be Exempt from Execution.

Amendment of Charter.

992. Amendment of Charters of Turnpike Companies.
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Stock.

994. Voting Power.
995. Officers to Produce Stock Book at Elections.
996. Supervisors of Townships to Subscribe for Stock in Companies.
997. Public Notice to be Given of Intention to Subscribe.

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998. When Court to License.
999. Rates of Tolls.
1000. Penalty for False Representation.
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1011. Proceedings on Neglect to Keep Road in Repair.
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1022. Appeal from Inquest.
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1023. Appointment of Jury of View.
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1025. Proceedings of Jury.
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1029. County Commissioners to Pay Damages on Confirmation of Report.
1030. Appeal to Common Pleas.
1031. Appeal to be Accompanied by Affidavit.
1032. Effect of Condemnation of Part of Turnpike Only.
1033. After Condemnation, Road to be as Other Public Roads.

Organization.

Incorporation.

985. [Corporations may be formed for] the grading, curbing, paving, or macadamizing, construction, and maintenance of any species of street, road, or highway, and the furnishing of materials and labor therefor, or the construction and maintenance of any species of road, other than a railroad, and of bridges in connection therewith.[1]

Clause 4 of the Act of April 29, 1874, as amended by the Act of May 24, 1887, provides for the incorporation of street paving and construction companies, as well as the maintenance and operation of road companies. Section 30 of the Act of 1874 applies only to road companies, and not to construction companies formed under the Act of 1887.

In Pennsylvania Paving Co., 6 Pa. C. C. R. 122 (1888), Attorney-General KIRKPATRICK, in construing the Acts of 1874 and 1887, relating to road companies and construction companies, said: "The application sets forth, in the second paragraph thereof, that 'said corporation is formed for the purpose of grading, curbing, paving, macadamizing, constructing, and repairing streets, roads, or highways, and furnishing materials and labor therefor,' and it is claimed that the subscribers to the said application are entitled to be incorporated under the provisions of the Act of April 29, 1874, and its supplements, as amended by the Act entitled 'An act

[1] Act of May 24, 1887, P. L. 186, amending the Act of April 29, 1874. See Chapter XLVIII, Boulevard Companies.

to amend paragraph 4 of the second sub-division of the second section of an act entitled 'An act to provide for the incorporation of certain corporations,' approved April 29, A. D. 1874, to provide for the incorporation of street paving and construction companies:" Act of May 24, 1887, P. L. 186.

"The object of the application, therefore, is to secure a charter of incorporation for a street paving and construction company, and not a road company, as provided for in Clause 4 of the second section of the original Corporation Act of 1874, the language of which clause is: 'IV. The construction and maintenance of any species of road, other than a railroad, and of bridges in connection therewith.'

"It is clear that—prior to the passage of the Act of May 24, 1887, taking Clause 4 of Class 2 in the second section of the Act of 1874, in connection with Section 30 of the same Act, which provides, among other things, that the charter of a road company shall state the place from and to which the road is to be run, and also the estimated length of it, and the counties through which it is to run, and which further provides for the exercise of the right of eminent domain, and the right to take tolls by such companies, nothing but a road company, such as is indicated in Section 30 of the original act, could be considered as intended by said Clause 4 of Class 2.

"The Act of May 24, 1887, P. L. 186, was evidently intended to provide for the incorporation of companies having a different purpose from those described in Clause 4, already quoted. The amendment was accomplished by adding to the language of Clause 4 of Class 2 of the Act of 1874, the further words, to wit: 'The grading, curbing, paving, or macadamizing, construction and maintenance of any species of street, road, or highway, and the furnishing of materials and labor therefor,' which words were prefixed to the language originally used in Clause 4, and separated therefrom by the disjunctive word 'or.'

"To hold that the additional words introduced by the amendment have relation to a road company, in the sense of that expression as used in the Act of 1874, and do not mean a road construction company, would be to render the Act of 1887 purposeless, because the words already used in the Act of 1874, which provides for the incorporation of companies 'for the construction and maintenance of any species of road other than a railroad,' etc., would embrace the details expressed in the words 'grading, curbing, paving, or macadamizing,' and the right to exercise the power to construct roads in that manner is amply conferred by the terms of the original act. It is to be presumed that the legislature intended by the mandatory act something more than had already been provided for in a previous enactment. 'It is a cardinal rule that all statutes are to be construed so as to sustain rather than ignore them; to give them operation, if the language will permit, instead of treating them as meaningless:' Howard's Ap., 70 Pa. 344.

"Moreover, it may be inferred from the employment of the word 'street' in the later act, in the connection already quoted, that the legislature did not intend to provide for the construction of a street in the same sense and for the same purpose that it provided for the construction and maintenance of a road in the Act of 1874—that is to say, to maintain and operate the same and take tolls for the use thereof. The mere fact that the additional provision was incorporated into Clause 4 does not require us, in the construction of the clause, to limit the meaning of the additional words to a road company such as is contemplated in the original act. The Act of 1874 could as well have been amended by introducing the additional provisions as a separate clause. Had the additional words been introduced as a separate clause, there could have been no doubt that something more was intended than had already been provided for in the original clause already quoted. What was there to prevent the legislature from enlarging the scope of the Act of 1874, so as to

embrace a construction and paving company by introducing apt words in any one of the clauses already contained in the Act of 1874, instead of making a separate clause and giving it another number?

"Section 30 of the Act of 1874 does not necessarily refer to anything more than was contained in the clause as originally expressed in the Act of 1874. It does not say that 'the charter of a company, provided for by Clause 4 shall state, etc.,' and then follow the provisions which are applicable only to road companies maintained and operated for the purpose of taking tolls, etc. Had the purpose of the amendatory act been expressed in a separate clause, there could be no reasonable contention that the provisions of Section 30 of the Act of 1874 would have limited or been applicable to such additional provisions. If the object of the amendment is to enlarge the scope of the Act of 1874 so as to embrace paving and construction companies, and such as the fair meaning of the words, Section 30 need not be held to have any application thereto, or to limit or to control the meaning thereof, because the terms of said action are properly applicable only to road companies of the kind and character clearly indicated in said section. There is no more necessity for referring Section 30 to the provisions providing for another kind of company, added to Clause 4, than if such provisions had been added to one of the other clauses, or had been added to the Act as a separate clause.

"We may, therefore, consider that Clause 4, as amended, is now intended to provide for corporations of two kinds, the added words covering 'street paving and construction companies,' and the original words of the old clause covering 'road companies,' and that Section 30 being, by its own language, confined to road companies, could have no relation to companies limited to the purposes described in the new words.

"Street paving and construction companies incorporated under Clause 4 of the Act of April 29, 1874, as amended by

the Act of May 24, 1887, P. L. 186, in addition to the right to construct and build roads, have the right to repair and put in proper condition roads and streets already constructed and in use for persons or municipalities having control thereof."[2]

Requisites of Charter.

986. The charter of a road company shall also state:

I. The kind of road intended to be constructed.

II. The places from and to which the road is intended to be run.

III. The counties through which it is to pass, and the estimated length of the road. All road companies incorporated under this statute shall, from the date of the letters-patent creating the same, be governed, managed, and controlled as follows, and shall be entitled to the benefits of all the general laws of this Commonwealth regulating turnpike or plank roads.[3]

Powers of Directors.

987. The directors of such corporation shall have full power and authority to appoint, agree, and contract with such engineers, superintendents, artists, laborers, and other persons, as they may think necessary to make and construct such road, and collect the tolls hereinafter authorized, and to fix their compensation; to ascertain the times, manner, and proportions in which the stockholders shall pay the amount of their respective shares in order to carry on their work; to draw orders on the treasurer for all debts contracted by them, which orders shall be signed by the president, or in his absence by a majority of directors, and attested by their clerk, and to do and transact all other acts, matters, or things as the by-laws, orders, and regulations of such corporations shall be intrusted to them.[4]

May Enter upon Lands.

988. It may be lawful for the directors of such corporation, by and with their superintendents, engineers, artists, work-

[2] Pennsylvania Paving Co., 6 Pa. C. C. R. 122 (1888).

[3] Act of April 29, 1874, Sec. 30, P. L. 73. Commonwealth *v.* Turnpike Co., 1 Luz. L. T. (N. S.) 127 (1879).

[4] Act of April 29, 1874, Sec. 30, Cl. 1, P. L. 85.

men, laborers, their tools and instruments, carts, wagons, and other carriages, and beasts of draught or burden, to enter in and upon the lands contiguous and near to which the said road shall be made or constructed, first giving bond and proceeding as required by the forty-first section of this act. Any such corporation may change the location of any part of its road which may interfere with any graveyard, or cemetery lot or lots.[5]

A turnpike company incorporated under the act of 1874 cannot appropriate an existing highway, merely to avoid the expense of acquiring a new route through private property, where the charter of the company merely specifies the termini, but is silent as to the intermediate route. In such a case the fact that the highway is in bad condition for travel is no grounds for its condemnation by the turnpike company. "It is the necessity for the new use, not the inadequacy of the old, that is the test of such a change."[6]

Accounts.

989. The directors of every such corporation shall keep fair and just accounts, as well of all moneys received by them, as of those paid out and expended in the prosecution of the work, and shall, at least once in every year, submit their books and accounts to a general meeting of the stockholders.[7]

Construction of Bridges and Roads.

990. The directors of such corporation shall have power to erect good and sufficient bridges over all the streams of water crossed by their road, whenever the same shall be found necessary, and shall cause a road, if a turnpike, to be laid out not exceeding fifty feet in width, and cause at least eighteen feet of said width, exclusive of gutters, ditches, or drains, to

[5] Act of April 29, 1874, Sec. 30, Cl. 2, P. L. 85. As to the measure of damages see Plank Road Co. *v.* Thomas, 20 Pa. 91 (1852).

[6] Groff's Ap., 128 Pa. 621 (1889). In this case Judge MITCHELL considered it extremely doubtful whether the Act of 1874 would authorize the issue of any charter granting an express power to take other public property or franchises, except incidentally and to such extent only as would not destroy or substantially impair the existing public use.

[7] Act of April 29, 1874, Sec. 30, Cl. 3, P. L. 85.

be made an artificial road of wood, stone, gravel, or other proper and convenient materials, such as the nature of the ground may require, and will afford, to be constructed in such manner as will admit an even surface, and so nearly level in its progress that it shall in no place rise or fall more than will form an angle of four degrees from a horizontal line; and if a plank road, the same shall be opened of any width not exceeding forty feet, and shall be graded in such manner as may be necessary for either a single or double track, as may be determined upon by the directors of the said corporation, each track being not less than eight feet in width, and so nearly level in its progress that it shall in no place rise or fall more than will form an angle of three degrees with a horizontal line: Provided, that if any part of the ground on the route of said road shall be so hard and compact as to make a good road without any covering of wood, gravel, stone, slate, or other hard substance, the said directors are hereby authorized to construct such part of said road without any such covering, and shall forever maintain and keep the same in good repair: Provided, that said bridges shall not be constructed so as to obstruct the navigation of any stream declared a public highway.[8]

Where ground has been lawfully laid out and marked for a turnpike road, no private occupancy of a portion of the ground can deprive the turnpike company of the right after any lapse of time to open the road for travel to the entire width, as originally laid out. This is due to the fact that the turnpike is a public highway, and no adverse use vests a title in such a highway inconsistent with the public use.[9]

Materials of Construction to be Exempt from Execution.

991. Lumber, stone, and other materials purchased by and delivered to any turnpike or plank road company, and intended and appropriated to the construction or repair of the road of such company, shall not, hereafter, be liable to levy and sale upon any writ in the nature of an execution issued against such company, but shall be liable upon a proceeding of sequestration to such control and disposition as

[8] Act of April 29, 1874, Sec. 30, Cl. 4, P. L. 85.
[9] Stevenson's Ap., 17 W. N. C. 429 (1886).

provided by law, in the case of real estate and other property of a corporation.[10]

Amendment of Charter.

Amendment of Charters of Turnpike Companies.

992. Any turnpike road company, duly incorporated within the State of Pennsylvania, that shall be desirous of improving, amending, or altering the articles and conditions of the instrument upon which the said corporation is respectively formed and established, it shall and may be lawful for such corporation to specify the improvements, amendments or alterations which are, or shall be desired, and exhibit the same to the Court of Common Pleas of the proper county in which said corporation is situated, as aforesaid; when, if the said court shall be of the opinion such alterations are, or will be, lawful and beneficial, it shall be the duty of said court to direct said writing to be filed in the office of the prothonotary of said court, and also direct notice to be inserted in one newspaper printed in the proper county for at least three weeks, setting forth that an application has been made to said court for such alteration, amendment or improvement of the charter of said corporation; and if no sufficient reason is shown to the contrary, it shall be lawful for said court, at the next term thereafter, to decree and declare by their order endorsed on said instrument, attested in the usual manner by the prothonotary under the seal of said court; and after decree is made and said amendments are recorded in the office for recording of deeds in said county, the same shall be deemed and taken to be a part of the instrument upon which said corporation was formed and established, to all intents and purposes as if the same had originally been made part thereof.[11]

The Act of June 13, 1883, P. L. 122, did not deprive the Court of Common Pleas of the power to amend charters of turnpike companies created by special Act of Assembly.

Under the Act of June 4, 1879, the courts may amend the charter of turnpike companies so as to extend their route

[10] Act of May 8, 1854, Sec. 1, P. L. 682.

[11] Act of June 4, 1879, Sec. 1, P. L. 91. See Act of June 13, 1883, P. L. 122.

beyond the original termini, and to take possession of public roads for the purpose of such extension.[12]

Fees and Expenses—Evidence—Acceptance of State Constitution.

993. The usual fees allowed by law for equal or similar services shall be received by the respective county officers under the provisions of this act; and all the expenses of procuring said alterations or amendments and recording the same, shall be borne by the corporation applying therefor; and after said alterations and amendments shall be recorded, as before directed, the same shall be duly certified to be recorded and delivered over to the applicants; and a copy of the record, duly certified, shall be at all times as good evidence as the original might or could be: Provided, that this act shall not apply to any such corporation until it shall have filed its acceptance of the provisions of the new Constitution with the said court, which said acceptance shall be recorded in the office for the recording of deeds in said county.[13]

Stock.

Voting Power.

994. In all elections or meetings of stockholders of any turnpike, plank road, or bridge company, incorporated under any law of this Commonwealth, every stockholder shall be entitled to one vote for every share of stock by him or her held in such corporation, to be cast either in person, or by proxy, duly constituted by power of attorney in writing, attested by one or more subscribing witnesses.[14]

Officers to Produce Stock Book at Elections.

995. It shall be the duty of the treasurers or secretaries, as the case may be, of the several turnpike and bridge companies incorporated within this Commonwealth to produce at the several places of holding the elections for officers of said companies the stock books belonging to their companies respectively, and to open the said books

[12] Commonwealth *v.* Phila., Bala & Bryn Mawr Turnpike Co., 12 Pa. C. C. R. 275 (1892).

[13] Act of June 4, 1891, Sec. 2, P. L. 91.

[14] Act of June 11, 1879, P. L. 139.

during the continuance of such election to the inspection of any stockholder or stockholders demanding the same, and in case the said treasurers or secretaries, as the case may be, shall neglect to produce the said stock books belonging to their companies respectively, at the place of holding their elections for officers, or shall refuse to open the same to the inspection of any of the stockholders of the companies at the time of holding the elections, such treasurer or secretary, as the case may be, shall for every such neglect or refusal forfeit and pay the sum of one hundred dollars, to be recovered at the suit of any stockholder or stockholders, in like manner as sums of the same amount are by law recoverable within this Commonwealth; and every election held after the first day of August next, where the stock books of the company holding such election shall not be produced and opened to the inspection of the stockholders in manner aforesaid, shall be deemed null and void.[15]

Supervisors of Townships to Subscribe for Stock in Companies.

996. The several supervisors of the public highways of the respective townships in this Commonwealth are hereby severally authorized and empowered to subscribe for so much capital stock in such turnpike companies, who have constructed, or may hereafter locate and construct, any such turnpike road through such township as may be agreed upon by the tax-payers of said respective townships.[16]

Public Notice to be Given of Intention to Subscribe.

997. Where any such turnpike as aforesaid may now pass, or hereafter be constructed, or that when any turnpike company may contemplate to make a turnpike road through any of such townships, it shall be the duty of the respective supervisors of such townships, as often as may be required by request made in writing by at least twelve tax-payers of said township, to cause public notice to be given on a day therein mentioned, by at least six printed or written advertisements, affixed at as many of the most noted places in said township, at least one week before said day, that an election will be held on said day, at the usual place where the township elections are held to elect township officers; said election to be opened

[15] Act of March 19, 1828, Sec. 1. P. L. 195.

[16] Act of April 5, 1842, Sec. 7, P. L. 230.

between the hours of one and two o'clock of that day by said supervisors, to be assisted by two qualified citizens, chosen by such citizens qualified to vote as shall then be present, who shall be judges of said election; and such citizens of said township qualified to vote at a general election shall, between the hours of one and six o'clock of that day, decide by ballot for or against accepting the provisions of this act, and at the same time decide by ballot the amount of stock to be subscribed for, on behalf of said township; the acceptance and the non-acceptance of this act, and the amount of stock to be subscribed for, shall be governed by the majority of votes at any such election, and the said judges and supervisors shall make duplicate returns under their hands of all such elections, one to be retained by the supervisors, and the other delivered to the president of such turnpike company, who may have constructed, or about to construct such turnpike through said township, and if there should be a majority of votes at any such election in favor of accepting the provisions of this act, it shall be the duty of the supervisors of such townships, on behalf of the citizens thereof, to subscribe for so much capital stock in such turnpike company as may have been agreed upon at such election, and shall assess such an amount of tax on the citizens of such township as may be requisite for the disbursement of the same, to be assessed and collected in such manner as is provided for taxes to be levied and collected to keep the public highways in repair; and it shall be the duty of the several supervisors of such townships to receive all dividends and emoluments arising on such stock, and apply the same towards keeping the public highways in such township in repair, and such supervisors shall receive such compensation for their services that they may be entitled to receive for like services in said township.[17]

Tolls.

When Court to License.

998. Whenever such corporation shall have finished five miles or more of road, or if the entire road be for a shorter distance, then when completed, the Court of Quarter Sessions of the proper county, shall appoint forthwith three skillful, judicious, and disinterested persons to view and examine the same, and report on oath or affirmation, whether

[17] Act of April 5, 1842, Sec. 8, P. L. 230.

the said road is so far executed in a competent and workmanlike manner, according to the true intent and meaning of this act, and if their report shall be in the affirmative, then the said court shall by its order, under the seal of the court, permit and suffer said corporation to erect and fix such and so many gates upon and across the said road as will be necessary and sufficient to collect from all persons otherwise than on foot the same tolls as is herein authorized and granted.[18]

Rates of Toll.

999. When such corporation is licensed in manner aforesaid, it shall and may be lawful for them to appoint such and so many toll gatherers as they shall think proper, to collect and receive of and from all and every person or persons using the said road, the tolls and rates hereinafter mentioned, and to stop any person, riding, leading, or driving any horses, cattle, hogs, sheep, coach, coaches, sulky, chair, chaise, phaeton, cart, wagon, wain, sleigh, sled, or any other carriage of burden or pleasure from passing through the said gate until they shall respectively have paid the same; that is to say, for every mile in length, or portion of a mile, whether passing through a gate or not of said road, completed and licensed as aforesaid, the following sums of money, and so in proportion for any greater or lesser number of sheep, hogs, or cattle, to wit: For every score of sheep, one cent; for every score of hogs, two cents; for every score of cattle, two cents; for every horse and his rider, or led horse, one cent; for every sleigh or sled, one cent for each horse drawing the same; for every sulky, chaise, or cart with two wheels, one cent for each horse drawing the same; for every carriage, coach, dearborn, or wagon with four wheels, whose wheels shall be less than four inches in breadth, with one horse, one and one-half cents, and for every additional horse drawing the same, one cent; for every wagon of burden whose wheels shall be four inches and not exceeding seven inches wide, one cent for every horse drawing the same; for every wagon of burden the breadth of whose wheels shall be more than seven inches, one-half cent for each horse drawing the same: Provided, that for any wagon, et cetera, carrying burden exceeding two tons in weight on wheels less than four inches wide, and for

[18] Act of April 29, 1874, Sec. 30, Cl. 5, P. L. 85.

any wagon, et cetera, carrying burden exceeding four tons in weight on wheels less than six inches wide, double rates may be charged.[19]

Penalty for False Representation.

1000. And if any person or persons shall represent to the said company, or any of their officers or employees, that he or she or they have traveled a less distance than he or she or they have actually traveled along said road, with intent to defraud said corporation of its toll or any part thereof, such person or persons shall, for every such offense, be deemed guilty of a misdemeanor, and upon conviction thereof before any alderman, magistrate, or justice of the peace, shall be fined by such officer in any sum not exceeding ten dollars, to be paid one-half to the said corporation, and the other half to the school fund of the township in which the offense was committed; and if said fine or penalty and the costs of the proceedings be not paid, then said alderman, magistrate, or justice of the peace shall commit said offender to the county prison, there to remain until discharged by due course of law.[20]

Penalty for Demanding Illegal Toll.

1001. If any toll-gatherer shall demand and receive toll for a greater distance than the person of whom such toll is demanded shall have traveled along said turnpike road or plank road, or shall demand and receive greater toll from any person or persons than such toll-gatherer is authorized to demand and receive, by virtue of this act, such toll-gatherer shall forfeit and pay the sum of five dollars for every such offense to the supervisors of the township in which the forfeiture is incurred, to be expended in repairing township roads, and for the payment of which the said company shall be responsible; and all such penalties and forfeitures shall be recoverable, with costs of suit, before any justice of the peace of the county in which the offence is committed.[21]

[19] Act of April 30, 1879, Sec. 1, P. L. 36, amending the Act of April 29, 1874, Sec. 30, Cl. 6.

A turnpike road company may collect toll upon bicycles: Geiger *v.* Perkiomen & Reading Turnpike Road Co., 167 Pa. 582 (1895).

[20] Act of April 30, 1879, P. L. 35.

[21] Act of April 29, 1874, Sec. 30, Cl. 6, P. L. 86. See Porter *v.* Dawson Bridge Co., 157 Pa. 367 (1893).

Exemption from Payment of Toll.

1002. No toll shall be demanded from any person or persons passing and repassing from one part of his, her, or their farm to any other part of the same farm; and all persons with their vehicles or horses, going to or from places of public worship, or of military trainings or elections, and also all funeral processions, shall be exempt from the payment of toll, when traveling on such turnpike road.[22]

Commutation of Toll.

1003. It shall and may be lawful for the president and managers of any turnpike, plank road, or bridge company of this Commonwealth, by themselves, or by their authorized agent, to contract with individuals, or with corporations, for the payment of tolls, not exceeding the rate fixed in their respective charters, for travel over and upon their roads and bridges respectively, and for any period of time that may be agreed upon, not exceeding one year, and whether such travel shall pass through any gate, or turnpike, or otherwise; and any debt incurred under such contract may be sued for and recovered as debts of like amount are by law recoverable.[23]

Penalty for Defrauding Company.

1004. If any person or persons whosoever, owning, riding in or driving any sulky, chair, chaise, phaeton, cart, wagon, sleigh, sled, or other carriage of burden or pleasure, riding or leading any horse, or mule, or gelding, or driving any hogs, sheep, or other cattle, shall therewith pass through any private gate or bars, or along or over any private passageway or other ground, near to or adjoining any gate erected, or which shall be erected in pursuance of this act, with an intent to defraud the company and avoid the payment of the toll or duty for passing through any such gate, or if any person or persons shall, with such intent, take off, or cause to be taken off, any horse, mare, or gelding, or other cattle, from any sulky, chair, chaise, phaeton, cart, wagon, sleigh, sled, or other carriage of burden or pleasure, or practice any other fraudulent means or device with the intent that the payment of any such toll or duty may be evaded or lessened, all and every person or persons, in all and every

[22] Act of April 30, 1879, Sec. 2, P. L. 35.
[23] Act of March 31, 1860, Sec. 1, P. L. 484.

or any of the ways or manners offending, shall for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof before any alderman, magistrate, or justice of the peace, shall be fined by such officer in any sum not exceeding ten dollars, to be paid one-half to the company owning the turnpike road, and the other half to the school fund of the township in which the offense was committed; and if said fine or penalty, and the cost of the proceedings, be not paid, then such alderman, magistrate, or justice of the peace shall commit said offender to the county prison, there to remain until discharged by due course of law.[24]

Obstructing Passage While Attempting to Evade Toll.

1005. Any person or persons driving, riding in or driving any wagon, carriage, or other vehicle, or riding or leading a horse or horses, or driving or leading any cattle or sheep, who shall willfully obstruct or impede the free and safe passage of any other person or vehicle, in attempting to evade the payment of toll at any toll-gate of any road of any association or commission authorized by law to erect gates and charge and collect tolls, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten dollars ($10) or by imprisonment in the county jail for a term not exceeding thirty days, or either or both, at the discretion of the court.[25]

Power to Alter Tolls.

1006. The legislature shall have power to alter the rate of toll fixed by this act, and the directors of any such company may lessen the same whenever they shall believe it necessary for the well-being of the corporations or the community at large.[26]

Recovery of Tolls by Suit.

1007. If any person shall pass through any toll gate with any animal or animals, vehicle or vehicles, for which toll is demandable, without paying such toll, it shall and may be

[24] Act of April 30, 1879, P. L. 37, amending the Act of April 29, 1874, Sec. 30, Cl. 9.

[25] Act of June 4, 1879, P. L. 85.

[26] Act of April 29, 1874, Sec. 30, Cl. 10, P. L. 90. See Act of April 7, 1849, Sec. 4, P. L. 461.

lawful for the turnpike, road, or bridge company entitled to demand the said toll, notwithstanding that such toll gate may not have been closed when such person or persons passed by and through the same, to sue for and recover the same before any alderman or justice of the peace of this Commonwealth, with cost of suit; and in every such suit the collector of tolls shall be a competent witness for the plaintiff: Provided, that such suit shall be brought within thirty days from the time such person shall have so passed through said gate without paying the toll aforesaid.[27]

Toll-Houses or Gates not to be Erected Within Borough Limits.

1008. From and after the passage of this act it shall not be lawful for any turnpike road company to erect any toll house or toll gate within the limits of any borough, now incorporated or hereafter to be incorporated within this Commonwealth.[28]

Maintenance and Protection of Road.

Penalty for not Keeping Road in Repair.

1009. Any turnpike company who shall permit large and unbroken stones, or heaps of stones which may endanger the passage of any wagon, stage, or other carriage, to remain on the paved or artificial parts of their respective roads for a period exceeding twenty-four hours after information being given that such obstructions do exist, shall be liable to pay a fine not exceeding forty dollars, nor less than ten dollars, for every such offense, to be recovered on conviction thereof before any justice of the peace of the proper county, as debts of like amount are by law recoverable, with costs of suit, the one-half to the use of the prosecutor, and the other half to and for the repair of the roads within the township where such obstructions are found.[29]

Process may be Served upon Gatekeepers.

1010. Information given to, and the service of any summons upon one of the gatekeepers or toll-gatherers of any

[27] Act of April 19, 1850, Sec. 5, P. L. 518.

[28] Act of June 6, 1893, Sec. 1, P. L. 229, Conestoga & Big Spring Valley Turnpike Co. *v.* Lancaster, 151 Pa. 543 (1892).

[29] Act of March 21, 1833, Sec. 1, P. L. 91.

turnpike company next to where such obstructions may be found, shall be as good and valid in law as if given to or served upon the president or other principal officer, or the treasurer, secretary, or chief clerk of any turnpike company as aforesaid.[30]

Proceedings on Neglect to Keep Roads in Repair.

1011. If any turnpike or plank road company incorporated under the laws of this Commonwealth, shall neglect or refuse to keep their road in good traveling order and repair for the space of twenty days, and information thereof shall be given under oath or affirmation to any justice of the peace in the neighborhood and county, designating where and in what respect said road is defective, such justice shall issue a precept to any constable of the county, requiring him to notify the gate-keeper nearest whose gate the part or parts of the road complained of is situated, that on a certain day and at a certain hour therein mentioned, not less than three nor more than six days thereafter, three freeholders will be chosen at his office to hold an inquest to inquire into the truth of the matter specified in said information, an attested copy of which precept shall be given by said constable to said gate-keeper at the time of serving said notice.[31]

Selection of Inquest.

1012. The three persons mentioned in the preceding section shall be chosen as follows: At the time and place fixed as aforesaid, the said justice shall prepare a list of names of fifteen reputable freeholders of the vicinity, and the complainant and agent, or other officer of the company, shall alternately strike out one name from the list till only three names remain, which three shall be the persons to hold said inquest; should either party be unrepresented at the time of choosing said freeholders, the justice shall act for him or them, and should neither party be present or represented the justice shall appoint three disinterested freeholders to hold said inquest.[32]

[30] Act of March 21, 1833, Sec. 2, P. L. 91.

[31] Act of May 22, 1878, Sec. 1, P. L. 85. See Kreider *v.* Lancaster E. & M. Turnpike Co., 162 Pa. 537 (1894).

[32] Act of May 22, 1878, Sec. 2, P. L. 85.

Duties of Inquest.

1013. The inquest thus chosen shall, after having been duly sworn or affirmed, proceed to view the part or parts of the road complained of, and shall report to the said justice in writing, under their hands and seals, or the hands and seals of a majority of them, within five days after said view, whether the said road be so out of order and repair as to be inconvenient or dangerous for travel, and if so found the said justice shall adjudge the said company to pay a fine of not less than twenty-five nor more than fifty dollars, payable to the road commissioners or supervisors of the townships in which the portion of the road so found defective is situate, and shall enter judgment therefor as other judgments for like amount are now entered: Provided, that said company shall have the same right of appeal to the Court of Common Pleas of the proper county as in other cases of judgments of like amount entered before such justice: And provided further, that no proceeding shall be commenced under this act, unless the complainant or some other person shall have given fifteen days' previous notice in writing to the gatekeeper nearest to whose gate the part or parts of the road complained of is situate, specifying particularly the part or parts of the road alleged to be out of repair, and the nature of the defect alleged, and notifying him that unless it be repaired within fifteen days complaint will be made as herein provided.[33]

Constables to Report Defects.

1014. It shall be the duty of the constable of each township to make return to the Court of Quarter Sessions of the proper county of defects in turnpike and plank roads, in the same manner and to the same extent that they now make returns of defects in public roads; and the officers of every plank road or turnpike company, on indictment found on such return, or information made by any citizen before a justice of the peace as in other cases, shall be liable to the same penalties for allowing defects in the turnpike or plank road under their control that road commissioners or supervisors now are for defects in public roads.[34]

[33] Act of May 22, 1878, Sec. 3, P. L. 85.
[34] Act of May 22, 1878, Sec. 4, P. L. 85.

Repeal.

1015. Clause 7 of Section 30 of the act approved April 29, 1874, entitled "An act to provide for the incorporation and regulation of certain corporations," is hereby repealed as far as it applies to plank roads and turnpikes only.[35]

Penalties and Costs—How Recoverable.

1016. In all cases of complaint made, or suit instituted, under the provisions of this act against any corporation, if the complainant shall fail to sustain his complaint, or the plaintiff to sustain his suit, as the case may be, the corporation shall be entitled to recover costs, as in other cases, from the complainant or plaintiff, as the case may be, and in all cases where any corporation, which may have been chartered under and subject to the provisions of this act, shall be adjudged to pay any penalty or the costs of any proceedings authorized by this act, the party plaintiff or complainant shall have all the remedies for recovering of the same, with costs, against the said corporation that are provided for the recovery of debts or judgments of like amount in other cases; and if the said corporation shall fail to make payment in any case within twenty days after final adjudication, the Court of Common Pleas of the proper county, on application of the plaintiff, or some other person in his behalf, shall direct sequestration, and appoint a sequestrator, who shall have like powers and be subject to all the regulations and requirements provided in the seventy-third and seventy-fourth sections of an Act of the General Assembly of this Commonwealth, entitled "An act relating to executions," passed June 16, 1836: Provided, that where the judgment is final before the justice, or is not appealed from as provided in this act, the complainant, before proceeding to sequestration, shall file in the Court of Common Pleas of the proper county a transcript of the proceedings and judgment before the justice, which transcript shall be entered of record in the said court as under existing laws for the filing and entering of transcripts of judgments in other cases, and from such filing and entering shall have the effect of a judgment originally entered in the said court.[36]

[35] Act of May 22, 1878, Sec. 5, P. L. 85.
[36] Act of April 29, 1874, Sec. 30, Cl. 8, P. L. 89.

Penalty for Injuring Road.

1017. If any person or persons shall willfully and maliciously remove or destroy any part of such turnpike or plank road, or the property, buildings, or other works belonging to such company, or shall, designedly and with evil intent, place any obstruction on the line of said road, so as to endanger the safety of persons traveling on or over the same, such person or persons so offending shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be imprisoned in the county jail, for a term not exceeding six months, at the discretion of the court.[37]

Carters not to Obstruct Road at Night.

1018. No carter or teamster shall leave his wagon or team stand during the night within less than ten feet of the centre of the turnpike road, under a penalty of five dollars for each and every offense, to be recovered on conviction thereof before any justice of the peace of the proper county, with costs of suit, the one half for the use of the prosecutor, and the other half to and for the repair of the roads in the township where such offense may be committed.[38]

Abandonment.

Land to Revert to Former Owners in Certain Cases.

1019. Where any turnpike or plank road has been abandoned, in whole or in part, for not less than five years, the portion so abandoned, if not kept in proper repair by the township authorities, shall, upon due application to the proper court, after hearing, and decree that the road has not been kept in proper repair, revert to the owners thereof in fee simple, or if kept in proper repair by the township authorities, shall be subject to the same uses as other township roads, and may be occupied or appropriated like them under the right of eminent domain.[39]

[37] Act of April 7, 1849, Sec. 3, P. L. 461.

[38] Act of March 21, 1833, Sec. 3, P. L. 91.

[39] Act of June 11, 1879, Sec. 1, P. L. 126.

The abandonment of the road by the company does not affect the existence of the road as a public highway: Pittsburgh, McK. & Y. R. R. *v.* Commonwealth, 104 Pa. 583 (1883).

Evidence of Abandonment.

1020. Whenever any turnpike, plank road, canal, or slack-water navigation, or public highway of any company or corporation, incorporated by the laws of this Commonwealth, for the purpose of making, operating, or using the same, has been, or shall have been, for the period of five successive years, or upwards, decayed, out of repair, and unused, for the purposes mentioned in the charter of such company, the same shall be deemed and held to be abandoned, together with all the easements and servitudes incident thereto; and all the rights, privileges, and franchises of such company, in respect to the same, shall cease and determine; and such condition and non-use for the period aforesaid, may be given in evidence in any suit or proceeding wherein the facts of such abandonment may be material, and shall be conclusive proof thereof: Provided, that this act shall not apply to any such company heretofore incorporated, unless the right is reserved in its charter to resume its corporate privileges and franchises in case of the misuse or abuse thereof: Provided, that the provisions of the bill shall not apply to any canal in the counties of Schuylkill, Wyoming, Bradford, and Berks, nor to any turnpike or plank road in the county of Carbon.[40]

Supervisors of Townships to Assume Control in Certain Cases.

1021. Upon the abandonment, for any length of time, of the whole or any part of any turnpike or plank road, or in case any turnpike or plank road company, or any lessee or lessees, purchaser or purchasers, of such road shall neglect or refuse to keep their road in good order or repair, for the space of thirty days, and proceedings instituted under the fourteenth, fifteenth, and sixteenth sections of the act to which this is a supplement shall result in a finding, by the inquest, that such road, or any part thereof, is out of order and repair, and no appeal shall be taken to the Court of Common Pleas, or if upon such appeal the finding of the inquest and judgment of the justice shall be affirmed, it shall be the duty of the supervisors of each township through which the road, or part thereof so abandoned, or so found to be out of order and repair, may pass, forthwith to take charge of, and put in good order and repair such part of any such road as may be in their respective townships, and from time to time maintain and

[40] Act of March 22, 1871, Sec. 1, P. L. 231.

keep the same in good order, in like manner as if such road was a county road; and the same, or so much thereof as may be so abandoned, or so found to be out of order and repair, shall thenceforth be considered as a county road, free of tolls, until such time as the company, or other persons claiming the same, shall pay to the supervisors of said townships, for the use of said townships respectively, all sums of money, and for all labor, with interest, by the several supervisors expended upon such road: Provided, however, that in case of a plank road the supervisors shall not be bound to relay or repair the plank, but may work and repair and keep in good order such road, the same as if it were an ordinary county road.[41]

Appeal from Inquest.

1022. Appeals to the Court of Common Pleas from the findings of the inquest and judgment of the justice shall be placed at the head of the next trial list of said court.[42]

Acquisition of Roads by County.

Appointment of Jury of View.

1023. Whenever twenty-five or more resident tax-payers of any county, in this Commonwealth, shall petition the Court of Quarters Sessions of their county, representing that any turnpike, road, or highway, heretofore or hereafter constructed, upon which tolls are charged the traveling public under any general or special law, is located wholly or in part in their county, and that it would be for the best interests of the people of their county for such turnpike, road, or highway, or any part thereof, to become a public road, free from tolls and toll-gates, it shall be the duty of such Court of Quarter Sessions to appoint a jury of view, consisting of five reputable citizens of the petitioners' county, to view and condemn such turnpike, road, or highway, or part thereof, for public use, free from tolls and toll-gates, and to assess the damages to which the owner or owners thereof may be entitled therefor: Provided, however, that notice of the intended application for the appointment of such jury of view shall be published in two newspapers of general circulation in the petitioners' county, at least thirty days previous to the

[41] Act of April 5, 1870, Sec. 2, P. L. 48.
[42] Act of April 5, 1870, Sec. 3, P. L. 48.

time of making the application, and that like notice in writing shall be served upon the county commissioners or proper municipal authorities, at least ten days before making such application: And further provided, that such petitioners shall serve, or cause to be served, upon the county commissioners, or proper municipal authorities, a written notice of the time and place of the meeting of such jury of view, at least five days before such meeting shall be had.[48]

Duties of Master and Viewers.

1024. The said Court of Quarter Sessions may, in its discretion, appoint a competent stenographer to keep a faithful record of all proceedings before the viewers, and to furnish a full copy of his notes to be attached to and form a part of the record; and, in addition to the five viewers provided for in the first section of this act, shall appoint a reputable person, learned in the law, who shall preside at all meetings of the viewers, to be known as master, and have the power to determine the admissibility of evidence, to issue writs of subpœna to compel the attendance of witnesses, and the production of papers, and instruct the viewers upon matters of law, to which exceptions may be taken for the purpose of review, but shall not have a vote on any question of fact or value. Before entering upon the discharge of his duties of master, he shall be sworn, or affirmed, by the judge appointing him, or by the clerk of the Court of Quarter Sessions, to discharge his duties faithfully, impartially, and according to the best of his learning and ability; after being duly sworn or affirmed, he shall, at the first meeting of the viewers, swear or affirm the stenographer to the faithful discharge of his duties, and thereupon shall, separately, swear or affirm each viewer on his *voir dire* touching the competency to serve, his impartiality and disinterestedness, and a record thereof shall be made, and, upon objections then made by any person in interest, the court shall have the power, in its discretion, on cause shown, to revoke the appointment of any one, or all, of

[48] Act of June 2, 1887, Sec. 1, P. L. 306.

For special acts relating to Philadelphia County see Acts of March 24, 1869, P. L. 525; May 4, 1871, P. L. 585; April 9, 1873, P. L. 1075; April 28, 1873, P. L. 857, and Act of April 19, 1850, P. L. 518. The Act of April 5, 1849, P. L. 389, relates to Warren, McKean, Elk, and Potter Counties. See Philadelphia, Newtown, etc., Ry. Co.'s Ap., 120 Pa. 90 (1888); Vacation of C. & R. Turnpike, 23 W. N. C. 368 (1889).

the viewers, and appoint others in lieu thereof; when the five viewers are found to be disinterested and qualified to serve, the master shall administer an oath or affirmation to each viewer to perform his duties with fidelity, impartiality, and according to his best judgment.[44]

Proceedings of Jury.

1025. The members of such jury of view and the master, having been duly sworn or affirmed, as provided for in the preceding section of this act, shall organize; three members thereof, not including the master, shall constitute a quorum, with power to meet and perform the duties of such jury of view, and it shall be the duty of such jury of view to hear at least six witnesses at the request of the petitioners for or of those opposed to making any turnpike, road, or highway free from tolls and toll-gates, and a like number of witnesses on behalf of the company owning or operating such turnpike, road, or highway: Provided, however, that such jury of view may report in favor of petitioners, if such jury of view decree it for the best interests of the people of their county, without hearing any witnesses, if no request is made by any party to have witnesses examined.[45]

Where a turnpike road is taken by a county, the measure of damage is the value of the property at the time of taking to the owners, and not the value to the county, and the value is to be ascertained, not only by the mere value of the road itself and its structures, but also by the value of the franchise, and the value of the franchise depends largely upon the earning capacity of the road.[46]

Evidence of the original cost of the turnpike road may be considered by the jury, but it is not controlling upon them.[47]

It may be shown that unless the road were completed by a

[44] Act of June 2, 1887, Sec. 2, P. L. 306.

[45] Act of June 2, 1887, Sec. 3, P. L. 306.

[46] Montgomery County *v.* Schuylkill Bridge Co., 110 Pa. 54 (1885); Mifflin Bridge Co. *v.* Juniata County, 144 Pa. 365 (1891); Clarion Turnpike & Bridge Co. *v.* Clarion County, 172 Pa. 243 (1896); West Chester & Wilmington Plank Road Co. *v.* Chester County, 182 Pa. 40 (1897).

[47] West Chester & Wilmington Plank Road Co. *v.* Chester County, 182 Pa. 40 (1897).

certain date, the franchises would be subject to forfeiture under the law.[48]

Evidence is admissible of the physical condition of the road at the time it was taken. In West Chester & Wilmington Plank Road Company *v.* Chester County, 182 Pa. 40 (1897), the court said: "Undoubtedly it was proper for the defendant or the plaintiff to show precisely what was the condition, in a physical sense, of the property to be taken. If this turnpike was out of repair, having but a thin and irregular supply of hard material on its surface, if it had ruts and inequalities through the whole, or a portion of its length, would not the property be worth less as a whole, and in connection with the franchise, on that account? It would be a strange proposition, and one which we cannot possibly sanction, that such evidence cannot be given, because the property must be valued as a whole, including the franchise, and that no other testimony can be received except such valuation in the aggregate. The value of such a property as a whole depends largely upon its physical condition for the purposes for which it is intended, and proof of the condition, therefore, is proof as to value. In no event can it be said that such testimony is irrelevant or incompetent."

Returns made by the officers of the turnpike company to the State authorities are admissible as to the value of the company's franchises.

"The introduction of proof of the returns made by the officers of the company to the State authorities, as to the value of the plaintiff's stock, was certainly legitimate. Those returns were the acts of the plaintiff's officers. They were made under oath, and constituted important official documents. They were evidence, therefore, on the subject of the value of the stock at the time of the taking, and hence were proper for the consideration of the jury. The very question was ruled in the case of Mifflin Bridge Co. *v.* Juniata County,

[48] West Chester & Wilmington Plank Road Co. *v.* Chester County, 182 Pa. 40 (1897).

144 Pa. 365 (1891). We there say, 'It was clearly competent, therefore, for the defendant to show the value placed by the company upon its own stock, a valuation made upon oath by its own officers. It is no answer to this to say that the return was made by the officers, and not by the stockholders. The officers were the duly constituted agents or representatives of the latter, and their act was the act of the corporation itself. The return was made in pursuance of the Act of Assembly, and was the official act of the corporation. Hence we need not discuss the cases cited as to the power of an agent to bind his principal by his declarations. They are not relevant. While its return does not conclude the bridge company upon the question of value, it is nevertheless competent evidence for the consideration of the jury, and is moreover important.' We do not think there is any force in the contention that all or none of the returns should have been offered and received. Each return is independent of the others, and speaks for itself. If it was an admission against interest, it was admissible for that reason, and its competency would not be destroyed or affected, because there were other returns for other years."[49]

Fees.

1026. Each juryman serving on any such jury of view, shall be allowed the sum of two dollars and fifty cents for each day necessarily employed thereon, and the master's compensation shall be fixed by the court, and warrants shall be drawn by the county commissioners of the proper county on the treasurer of their county, for the payment of the amounts to which such juryman and master shall be entitled under this act, as well as the stenographer, whom the court shall appoint.[50]

Report of Jury.

1027. Such jury of view shall within thirty days after the appointment thereof, unless, in the discretion of the court,

[49] West Chester & Wilmington Plank Road Co. *v.* Chester County, 182 Pa. 40 (1897).

[50] Act of June 2, 1887, Sec. 4, P. L. 306.

the time be extended, report to the court appointing the same, as follows:

I. The names of the members of the jury and master who attended each meeting thereof:

II. The number, names, residences, and ages of the witnesses examined before a jury;

III. Whether or not the entire turnpike, road, or highway is located in the petitioners' county, and if not, what proportion is so located, and whether or not it is for the best interests of the people of the petitioners' county for the turnpike, road, or highway, or a part thereof, to be made free from tolls and toll-gates, and whether or not the same is condemned, by such jury of view, for public use, free from tolls and toll-gates, and if the whole of said turnpike, road, or highway lying in the petitioners' county is not condemned, but only a part thereof, then such part shall be clearly designated and described; and to which report shall be attached a map or draft of said turnpike road, showing definitely the points between which the same is condemned for public use for the turnpike, road, or highway, or part thereof, if the same shall be condemned for public use as aforesaid.[51]

Proceedings Upon Exceptions to Report.

1028. Exceptions may be filed by any party aggrieved to the report of such jury of view, within thirty days from the time such report is filed, which exceptions shall be heard by the court in which such report is filed, and such court, after considering such exceptions, may refer the report back to the jury of view, with instructions to take any further proceedings or testimony as the court may deem necessary and proper, or may set the same aside, or may confirm such report; and if no exceptions are filed to any such report, unless appeal is taken, as provided for in Section 8 of this act (and in such case the final confirmation of the proceedings shall await the result of the appeal from the assessment within thirty days from the time of filing thereof), then such report may be confirmed or dismissed by the court. Any party aggrieved by the action of the court may remove the proceedings to the Supreme Court by writ of certiorari, within twenty days after final confirmation or disapproval.[52]

[51] Act of June 2, 1887, Sec. 5, P. L. 306.

[52] Act of June 2, 1887, Sec. 6, P. L. 306.

County Commissioners to Pay Damages on Confirmation of Report.

1029. Immediately after any Court of Quarter Sessions shall confirm any report of such jury of view, condemning any turnpike, road, or highway, or part thereof, for public use, free from tolls and toll-gates, the collection of tolls of every kind on such turnpike, road, or highway, or part thereof, shall thereafter cease, and thereupon all toll-gates upon the part so condemned shall be forthwith removed therefrom; and, thereupon, it shall be the duty of the county commissioners of the proper county to draw a warrant or warrants on the treasurer of their county for the payment of any damages which shall be assessed, as aforesaid, against their county for any turnpike, road, or highway so condemned in their county, which warrant or warrants shall be made payable to the party or parties legally entitled to such damages.[53]

Appeal to Common Pleas.

1030. An appeal to the Court of Common Pleas of the proper county, for the assessment of damages, may be taken by the corporation owning or taking tolls on said turnpike, road, or highway road, or by the county commissioners, or by the proper municipal authorities, or by twenty-five citizens of the petitioners' county, within thirty days after the approval of the report, and, thereupon, the court shall direct an issue, which shall be tried by a jury, according to the course of the common law as regulated by existing statutes, and judgment entered on the verdict, and the record thereof shall be remitted to the proper Court of Quarter Sessions for further action upon the whole case: Provided, however, that the said judgment shall be reviewable by the Supreme Court upon writ of error as in other cases.[54]

Appeal to be Accompanied by Affidavit.

1031. Such appeal shall be accompanied by an affidavit made by an officer of said corporation, or by one of the county commissioners, or municipal officers, or by one of the twenty-five citizens, that the appeal is not taken for the purpose of delay, but because the affiant firmly believes that injustice has been done, and, after verdict, such order shall be

[53] Act of June 2, 1887, Sec. 7, P. L. 306.
[54] Act of June 2, 1887, Sec. 8, P. L. 306.

made in relation to the costs as to the court shall appear just.[55]

Effect of Condemnation of Part of Turnpike Only.

1032. If only a part of any such turnpike, road, or highway shall be condemned, nothing herein contained shall be taken to abridge the right of the company owning or operating such turnpike, to maintain toll-gates and collect tolls upon the remaining parts of their road not condemned as aforesaid: Provided, that it shall not be lawful so to condemn any portion of such turnpike, road, or highway, unless such portion extend to one of the terminal points of such turnpike, road or highway, or is a portion lying within the limits of any borough incorporated under any general or special law, and unless such portion be a continuous portion.[56]

After Condemnation, Road to be as Other Public Roads.

1033. When any turnpike, or portion thereof, shall have been condemned, under the provisions of this act, for public use, free of tolls or toll-gates, and the assessment of damages therefor shall have been paid by the proper county, such turnpike, or portion thereof, shall be properly repaired and maintained at the expense of the proper city, township, or district, as other public roads or streets therein are by law repaired and maintained.[57]

[55] Act of June 2, 1887, Sec. 9, P. L. 306.

[56] Act of June 11, 1891, Sec. 1, P. L. 295, amending the Act of June 2, 1887, Sec. 10, P. L. 306.

[57] Act of June 2, 1887, Sec. 11, P. L. 306.

CHAPTER LXXIII.

SAFE DEPOSIT COMPANIES.

1034. Powers.

Powers.

1034. Safe deposit companies shall have power to receive upon deposit for safe keeping, jewelry, plate, stocks, bonds, notes, and valuable property of every kind, upon terms to be prescribed by the by-laws of such corporation, which by-laws shall at all times be posted up in the place or places of business of such corporations.[1]

[1] Act of April 29, 1874, Sec. 35, as amended by Act of April 17, 1876, Sec. 9, P. L. 36. The sixteenth sub-section of Section 2, of the Act of April 29, 1874, P. L. 73, is as follows: "Associations for the purchase and sale of real estate, or for holding, leasing, and selling real estate, for maintaining or erecting walls or banks for the protection of low-lying lands, and for safe deposit companies."

CHAPTER LXXIV.

SALVAGE COMPANIES.

1035. Incorporation.
1036. Duties of Employees.
1037. Meetings.
1038. Payment of Employees—Statement.
1039. Penalty for Failure to Make Return.
1040. Certain Corporations Heretofore Created shall not be Abolished.

Incorporation.

1035. It shall and may be lawful for the president of any corporation, company, or association, and agent of any corporation, company, or association, doing the business of fire insurance in cities of the first class in this Commonwealth, or any of them, to associate themselves together and become a body corporate with all the powers of a corporation upon compliance with the general laws for erection of corporations, approved April 29, A. D. 1874, and its supplements, for the purpose of protecting life and property from fire in said cities. Such corporations shall be known as the salvage corps of the city in which they shall be organized.[1]

Duties of Employees.

1036. Every such corporation shall have power to appoint and maintain a corps of men, with proper officers, whose duty it shall be, as far as practicable, to protect life and property from damage by fire, subject to such general rules and regulations relating to going to and returning from fires as are in force in the fire departments of such cities, with the same privileges of right of way as belong to said departments. And while in attendance at any fire such corps of men and officers shall be subject to the order of the chief of the fire department of such city wherein it shall be located. Said

[1] Act of May 22, 1895, Sec. 1, P. L. 102.

corporation shall provide suitable apparatus to save and preserve life and property at or after any fire, and power is hereby granted to such corps, and its officers, to enter any building on fire, or which is immediately exposed to or in danger of taking fire from other burning buildings, to protect and save life and property therein, and to remove such property, or any part thereof, at or immediately after a fire: Provided however, that nothing in this act shall be so construed as to lessen in any way the authority of the officers and members of the fire department.[2]

Meetings.

1037. In the month of June in each year there shall be held a meeting of every corporation created under or accepting the provisions of this act, of which ten days' previous notice shall be inserted in at least two newspapers published in the city wherein such corporation shall be located, at which meeting each incorporated insurance company, or unincorporated insurance association, doing business in such city, whether its officers or agents may be members of such corporation or not, shall have the right to be represented by one of its officers or its agents, and each organization represented at such meeting shall be entitled to one vote. A majority of the whole number so represented shall have the power to decide upon the question of sustaining the corps of men and officers or corporation hereinbefore provided for, and of fixing the maximum amount of expenses which shall be incurred therefor during the fiscal year then next to ensue, which amount shall in no case exceed 2 per centum on the aggregate of premiums returned as hereinafter provided for; and the whole of such amount, or so much thereof as may be necessary, shall be assessed upon the organizations belonging to said corporation, and upon all other organizations and agencies doing fire insurance business in such city wherein said corporation is established, in proportion to the several amounts of premiums returned as received by each as hereinafter provided, and such assessments shall be payable within thirty days after they are levied, and shall be collectible by such corporation in any court of law of the State of Pennsylvania.[3]

[2] Act of May 22, 1895, Sec. 2, P. L. 102.
[3] Act of May 22, 1895, Sec. 3, P. L. 102.

Payment of Employees—Statement.

1038. To provide for the payment of persons employed, and to maintain the buildings and apparatus for saving life and property contemplated, every such corporation is empowered to require a statement to be furnished semi-annually, by all insurance companies, associations, underwriters, agents or persons, of the aggregate amount of premiums received for insuring real and personal property in the city where such corporation is located from loss by fire for and during the six months next preceding the thirtieth day of June and the thirty-first day of December in each year, which statement shall be sworn to by the president or secretary of such insurance company or association, or by the agent or person so acting and effecting such insurance in said city, and shall be handed to the treasurer of such corporation provided for by this act within thirty days after the time to which such returns are to be made; said returns shall specify:

First. The amount of gross premiums collected by such insurance company, or association, or agent during said six months on term policies of all kinds on risks located in said cities, deducting only premiums paid for re-insurance or cancellations of such term policies during said period.

Second. The gross amount of deposits on all perpetual policies in force on the last day of said six months on risks located in such cities. It is hereby provided, however, that the aggregate sum on which assessments shall be levied by said salvage corps shall be the amount of premiums on term policies ascertained as above recited, and the premium produced by the amount of perpetual deposits held by said insurance companies, associations, or agents, calculated at 4 per centum per annum.[4]

Penalty for Failure to Make Return.

1039. Every person or organization neglecting to make such return within thirty days after such notice, shall forfeit and pay the sum of one hundred dollars for every month of such default; said fine to be recovered by suit as other fines and taxes are now by law recoverable.[5]

[4] Act of May 22, 1895, Sec. 4, P. L. 102.
[5] Act of May 22, 1895, Sec. 5, P. L. 102.

Certain Corporations Heretofore Created shall not be Abolished.

1040. In every city wherein any corporation has heretofore been created by law for the purpose of protecting and saving life and property in or contiguous to burning buildings, and to remove or take charge of such property, or any part thereof, when necessary, such corporation shall not be abolished by this act, but upon filing with the auditor-general a certificate or acceptance of the provision hereof, shall be and continue hereunder as the salvage corps of such city wherein it is located, and enjoy all the powers and privileges of this act: Provided, however, if it shall not so file its acceptance within three months after the passage of this act, then the persons designed in this act may organize another corporation to execute the objects and purposes of this act, and thereupon the charter of every such corporation so refusing to accept shall be and is hereby repealed.[6]

[6] Act of May 22, 1895, Sec. 6, P. L. 102.

CHAPTER LXXV.

SAVINGS BANKS.

1041. Formation of Savings Banks.
1042. Notice of Application.
1043. Contents of Certificate of Association.
1044. Duties of Auditor-General Preliminary to Forming Association.
1045. Letters-Patent to Issue Upon Approval.
1046. Extension of Time in Case of Failure to Organize Within One Year.
1047. Renewal of Charters.
1048. Charter Powers.
1049. To Hold and Convey Real Estate.
1050. Not to Deal or Trade in Personal Property.
1051. Change of Location.
1052. Powers and Liabilities of Board of Trustees.
1053. Duties of Trustees as to Funds of Corporation.
1054. How Office of Trustee may Become Vacant.
1055. Change in Number of Trustees.
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1060. Cashiers Made Subject to General Laws.
1061. Preliminaries to Receiving Deposits.
1062. Receipt and Amount of Deposits.
1063. Deposit in Name of Minor, Married Woman, or in Trust.
1064. Surplus Limited—Excess to be Divided.
1065. Interest on Deposits.
1066. Unclaimed Deposits.
1067. Return of Unclaimed Deposits to be Made to Auditor-General.
1068. Savings Banks with Capital Stock to Issue Certificates Thereof for Transfer.
1069. Loans and Investment of Trust Funds.
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1073. Examiners—Their Powers, Expenses, and Compensation.
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1076. Change of Name.
1077. Taxation.

1078. Philadelphia Savings Institution—Issue of Notes by It or any Other Savings Bank Prohibited.

1079. Paying Out of Certain Notes Prohibited.

Formation of Savings Banks.

1041. Corporations for the encouragement of saving money, intended to be savings banks, may be formed under the provisions of this act by any number of persons, not less than thirteen, two-thirds of whom shall reside in the county where the proposed corporation shall be located, who shall enter into articles of association which shall specify the object for which the association is formed, and may contain any provisions, not inconsistent with this act, which the association may desire to adopt for the regulation and conduct of its business and affairs, which articles shall be signed by the persons forming such association, and a copy of them shall be forwarded to the attorney-general for his inspection and approval, and if approved by him he shall indorse his approval thereon, and transmit the same to the auditor-general, to be filed in his office.[1]

Notice of Application.

1042. Before application shall be made under the provisions of this act for the creation of any corporation, notice of such intended application shall be advertised in two newspapers of general circulation in the county in which such corporate body is located, or intended to be located, at least once a week for three months before such application shall be made, and the notice of such application shall specify the name, style, location, specific object for which created. If there should be only one paper printed in the county in which such corporate body shall be located, the publication of such notice in one paper shall be deemed sufficient, but if there be no paper printed in such county, then the notice shall be given in at least one paper published in one of the nearest adjoining counties.[2]

[1] Act of May 20, 1889, Sec. 1, P. L. 246.

[2] Act of May 20, 1889, Sec. 5, P. L. 246. The auditor-general will approve a charter to an intended corporation under the name of the Dime Savings Bank of Philadelphia, notwithstanding a protest from an institution named the Dime Savings Fund & Trust Co., on the ground of similarity: Dime Savings Bank of Phila., 9 Pa. C. C. R. 369 (1889).

Contents of Certificate of Association.

1043. The persons forming such association shall, under their hands, make a certificate which shall specify:

I. Name (subject to the approval of the auditor-general).

II. Location or place of business, particularly designating the county, city, borough, or village.

III. Names, residence, occupation, and post-office address of the proposed corporators.

IV. A declaration that each member of such association will accept the responsibilities and faithfully discharge the duties of a trustee in such institution when authorized according to the provisions of this act.

This certificate shall be acknowledged before a judge or notary public, which certificate and acknowledgment, certified and authenticated by the seal of such court or notary public, shall be transmitted, after approval by the attorney-general, to the auditor-general to be filed, recorded, and preserved in his office. Copies of such certificate, duly certified by the auditor-general, and authenticated by the seal of office, shall be conclusive evidence in all the courts of this Commonwealth of the existence of such corporations and of every other matter or thing which could be proved by the production of the original certificate.[3]

Duties of Auditor-General Preliminary to Forming Association.

1044. It shall be the duty of the auditor-general, and he shall have power in regard to any certificate of association so filed by him as hereinbefore provided, to ascertain from the best sources of information at his command:

I. Whether greater convenience of access to a saving bank will be afforded to any considerable number of depositors by opening a savings bank at the place designated in such certificate.

II. Whether the density of the population in the neighborhood designated for such savings bank, and in the surrounding country, affords a reasonable promise of adequate support for the enterprise.

III. Whether the responsibility, character, and general fitness for the discharge of the duties appertaining to such trusts, of the persons named in such certificate, are such as

[3] Act of May 20, 1889, Sec. 2, P. L. 246.

to command the confidence of the community in which such savings bank is proposed to be located.[4]

Letters-Patent to Issue Upon Approval.

1045. The auditor-general, upon the receipt of the articles of association, with the approval thereon of the attorney-general as aforesaid, and the certificates hereinbefore provided, shall certify a copy of such certificate to the governor, who shall upon receiving the same cause letters-patent, under the great seal of the Commonwealth, to be issued to said savings institution or savings bank.[5]

Extension of Time in Case of Failure to Organize Within One Year.

1046. Any savings bank so incorporated that shall not organize and commence business within one year after this certificate of authorization of the same has been filed, as hereinbefore provided, shall forfeit its rights and privileges as a corporation under this act; but the auditor-general may, for satisfactory cause to him shown, extend the term within which such organization may be effected and such business commenced, but not for a longer period than one year, and the order so extending such terms shall be under his hand and seal of office.[6]

Renewal of Charters.

1047. Provident institutions, savings institutions, and savings banks, banks of discount, and savings banks, and trust companies, not being banks of issue, chartered under the laws of the Commonwealth of Pennsylvania, may renew and extend their charters, corporate rights, and franchises for the period of twenty years, in manner following, namely: When the board of trustees or board of directors of any such institutions or savings banks, or banks, or banks of discount, or savings banks and trust companies, not being banks of issue, shall deem it expedient to have such charter, corporate rights, and franchises renewed and extended, and shall so decide, at a meeting called to consider the subject, they shall give notice, by publication for three months in two news-

[4] Act of May 20, 1889, Sec. 3, P. L. 246.
[5] Act of May 20, 1889, Sec. 4, P. L. 246.
[6] Act of May 20, 1889, Sec. 7, P. L. 246.

papers published in the city or town where said institution or savings bank, or bank, or bank of discount, or savings bank and trust company, not being banks of issue, is located, that at a specified time the stockholders, where there are stockholders, and the directors, managers, or trustees, where there are no stockholders, of such institutions or savings bank, or banks, or banks of discount, or savings banks and trust companies, not being banks of issue, will meet at the office or place of business of such institution or savings bank, or bank, or bank of discount, or savings bank or trust company, not being banks of issue, and vote for or against the proposition to renew and extend said charter, corporate rights, and franchises.

If a majority in interest of said stockholders, or directors, managers, or trustees, where there are no stockholders, shall decide in favor of such renewal and extension, said action shall be certified to the secretary of the Commonwealth, together with a statement of the condition of such institution upon a blank to be furnished by the auditor-general upon application made, said statement to be made by the cashier, secretary, or president, under oath, attested by at least three of the board of directors, trustees, or financial board of said institution, and a copy of its charter and all special Acts of Assembly relating to said institution or bank, or bank of discount, savings bank, and trust company, not being banks of issue, who shall refer the same to the governor, attorney-general, and auditor-general; upon a certificate being given by them or a majority of them that such renewal is not inconsistent with the public interests, and thereupon the said secretary of the Commonwealth shall issue a certificate, under the seal of said Commonwealth, that the charter, corporate rights, and franchises of said provident institution, savings institution, or savings banks, or banks, or banks of discount, or savings banks and trust companies, not being banks of issue, are duly renewed and extended for a period of twenty years: Provided, that said provident institution, savings institutions, or savings banks, or banks, or banks of discount, or savings banks and trust companies, not being banks of issue, shall thereafter hold its charter subject to the provisions of the Constitution of the State: Provided, also, that no provident institution, savings institution, or savings bank, having no capital stock, renewing or extending its charter, corporate

rights and franchises under the provisions of this act, shall thereafter be allowed the privilegs of a bank of discount, nor be allowed to loan any money received on deposit, except upon first mortgage or lien upon real estate within this Commonwealth, upon the bonds or securities of the United States, or of this State, or upon county, city, borough, township, or school bonds of any county, city, borough, township, or school district, or any other good and valid securities: And provided, that no bank re-chartered under the provisions of this act shall charge a greater rate of discount than 6 per centum per annum.[7]

Charter Powers.

1048. Every association formed under the provisions of this act shall, from the date of the letters-patent issued thereto, be a body corporate, and shall transact no business except such as may be incidental to the purpose of its organization, and shall have power to adopt a corporate seal and have succession by the name designated in its articles of association, perpetually from the date of the letters-patent, unless sooner dissolved under the provisions of the articles of association or by the provisions of any Act of Assembly. Such bodies corporate may make contracts, sue, and be sued, complain, prosecute, and defend in any court of law or equity, and before any magistrate as fully as natural persons, receive money on deposit, invest the same, and further transact the business of a savings bank as hereinafter provided, and process against such corporation may be served on its president or cashier, or by leaving a copy thereof with one of the officers thereof, during the usual hours of business. It shall elect or appoint trustees, and by its board of trustees appoint a president, vice-president, cashier, and other officers, and define their duties, require bonds of them, fixing a penalty therein, dismiss any of the said officers at pleasure, and appoint others to fill their places, and exercise under this act all such power as may be necessary to carry on the business of the corporation.[8]

[7] Act of May 10, 1889, Sec. 1, P. L. 185. The stockholders do not have the right to waive the notice of advertisement in proceedings for renewing the charter; the law should be strictly adhered to: Opinion of Attorney-General, 14 Pa. C. C. R. 144 (1893).

[8] Act of May 20, 1889, Sec. 6, P. L. 246.

To Hold and Convey Real Estate.

1049. It shall be lawful for any association incorporated under this act to purchase, hold, and convey real estate as follows:

I. Such as shall be necessary for its immediate accommodation in the transaction of its business.

II. Such as shall be mortgaged to it in good faith as security for debts contracted previous to the execution of any such mortgage.

III. Such as it shall purchase at sales under judgments, decrees, or mortgages held by such corporation, or shall purchase to secure debts due to said corporation.[9]

Not to Deal or Trade in Personal Property.

1050. It shall be unlawful for any corporation incorporated under this act, directly or indirectly, to deal or trade in real estate or in any goods, wares, merchandise, or commodities whatever, except as authorized by this act, and except such personal property as may be necessary in the transaction of its business.[10]

Change of Location.

1051. It shall be lawful for any such savings fund, with the approval in writing under the seal of the auditor-general, to change its location within the limits of any city or town wherein it may be established; and in effecting such change of location, such corporations owning a banking house and lot may purchase such additional plot as the corporation may require, and such banking house and lot previously owned and occupied shall be sold.[11]

Powers and Liabilities of Board of Trustees.

1052. The business of every such corporation shall be managed and directed by a board of trustees of not less than thirteen, who shall elect from their number a president and two vice-presidents, and shall elect or appoint from their number, or otherwise, such other officers as they may see fit; and all vacancies in such board by death, resignation, or

[9] Act of May 20, 1889, Sec. 8, P. L. 246.
[10] Act of May 20, 1889, Sec. 21, P. L. 246.
[11] Act of May 20, 1889, Sec. 10, P. L. 246.

otherwise, shall be filled by the board of trustees as soon as practicable at a regular meeting after such vacancies occur. This board of trustees shall have power to make by-laws, rules, and regulations for the election of officers and fixing their duties, the appointment of committees, and generally for transacting, managing, and directing the affairs of the corporation: Provided such by-laws, rules, and regulations are not repugnant to nor inconsistent with the provisions of this act, and of the Constitution and laws of the Commonwealth, or of the United States. If the insolvency of said savings fund be occasioned by the fraudulent conduct of the trustees aforesaid, the trustees by whose acts or omissions the insolvency was in whole or in part occasioned, shall each be liable to the depositors and creditors thereof for his proportional share of the losses, the proportion to be ascertained by dividing the whole loss among the whole number of directors liable for its reimbursement.[12]

Duties of Trustees as to Funds of Corporation.

1053. No trustee of any such corporation shall have any interest whatever, direct or indirect, in the gains or profits thereof, nor shall directly or indirectly receive any pay or emolument for his services, except as hereinafter provided; and no trustee or officer of any such corporation shall, directly or indirectly, for himself or as the agent or partner of others, borrow any of its funds, deposits, or in any manner use the same, except to make such current and necessary payments as are authorized by the board of trustees, nor shall any trustee or officer of any such corporation hereafter become an indorser or surety, or become in any manner an obligor for moneys loaned by or borrowed of such corporation.[13]

How Office of Trustee may Become Vacant.

1054. Whenever a trustee of any savings bank shall hereafter become a trustee, officer, clerk, or employee in any other savings bank, or upon his borrowing directly or indirectly any of the funds of the savings bank of which he is trustee, or becoming a surety or guarantee for any money borrowed

[12] Act of May 20, 1889, Sec. 11, P. L. 246.
[13] Act of May 20, 1889, Sec. 12, P. L. 246.

of, or a loan made by such savings bank, or upon his failure to attend the regular meetings of the board, or to perform any of the duties involved upon him as trustee, for six successive months without having been previously excused by the board for such failure, the office of such trustee shall thereupon immediately become vacant; but the trustee vacating his office by failure to attend meetings, or to discharge his duties may, in the discretion of the board, be eligible to a re-election.[14]

Change in Number of Trustees.

1055. It shall be lawful for the board of trustees of any such savings corporation, by a resolution of its board, a copy of which shall also be filed to the auditor-general, to reduce the number of trustees named in the original charter of such corporation to a number not less than the minimum named in this act; such reduction to be effected gradually by the occurrence of vacancies by death, resignation, or forfeiture, until the number is reduced to thirteen, or to such greater number as shall be designated in the aforesaid resolution; or the number of trustees may be increased to any number designated in the resolution for that purpose, where reasons therefor are shown to the satisfaction of the auditor-general, and his consent in writing obtained thereto.[15]

Compensation of Trustees.

1056. It shall be lawful for the trustees of such corporation acting as officers of the same, whose duties require and receive a regular and faithful attendance at the institution, to receive such compensation as in the opinion of a majority of the board of trustees shall be just and reasonable, but such majority shall be exclusive of any trustee to whom such compensation shall be voted; but it shall not be lawful to pay trustees as such for their attendance at the meetings of the board.[16]

Bonds of Officers and Agents.

1057. The trustees of any such corporation shall have the power to require from the officers and agents of the corpora-

[14] Act of May 20, 1889, Sec. 13, P. L. 246.
[15] Act of May 20, 1889, Sec. 26, P. L. 246.
[16] Act of May 20, 1889, Sec. 27, P. L. 246.

tion such security, to be fixed and approved by the Court of Common Pleas of the county in which said savings bank or institution is located, for their fidelity and the faithful performance of their duties, as shall be deemed necessary, and fix the salaries of such officers and agents, subject to the provisions of this act.[17]

Trustees to be Residents of State.

1058. No person shall be elected a trustee of any savings bank who is not a resident of this State, and removal from the State by any trustee hereafter elected shall vacate his office.[18]

Examination of Books, Etc.

1059. It shall be the duty of the trustees of every corporation incorporated under this act to make a thorough examination, at least once in every year, of the books, vouchers, assets, and affairs generally, and the statements furnished to the auditor-general, and to see that accurate balances of the depositor's ledger have been made, and to see if any discrepancies exist between the amount due the depositor, as shown by such balances, and the amount due the depositor as shown by the general ledger.[19]

Cashiers Made Subject to General Laws.

1060. All general laws relative to cashiers of banks shall be deemed and held applicable to the cashiers or treasurers of savings institutions.[20]

Preliminaries to Receiving Deposits.

1061. Before any savings bank or institution for the encouragement of saving, intended to be incorporated under this act, shall be authorized to receive deposits, such corporation shall transmit to the auditor-general the name, residence, and post-office address of each of the officers and trustees, and the place where its business is to be carried on, designating the same by street and number when practicable. The persons named in the certificate for incorporation, issued

[17] Act of May 20, 1889, Sec. 14, P. L. 246.
[18] Act of May 20, 1889, Sec. 28, P. L. 246.
[19] Act of May 20, 1889, Sec. 25, P. L. 246.
[20] Act of April 22, 1854, Sec. 4, P. L. 267.

pursuant to the provisions of this act, shall be the first trustees of such corporation, and shall have the entire management and control of all the affairs of the corporation subject to the provisions of this act.[21]

Receipt and Amount of Deposits.

1062. It shall be lawful for any corporation, incorporated under this act, to receive on deposit any sum or sums of money that may be offered by any person or persons, or by any corporations or societies, and to invest the same, credit, and pay interest thereon. The sums so deposited, together with the dividends or interest credited thereon, shall be repaid to such depositors respectively, or to their legal representatives, after demand in such manner and at such times, and after such previous notices and under such regulations, as the board of trustees shall prescribe; which regulations shall be printed in the pass-books or other evidences of deposit furnished by the corporation, and shall be evidence between the corporation and depositors holding the same of the terms upon which deposits therein acknowledged are made; and every such corporation shall have the right to limit the aggregate amount which any one person or persons or societies may deposit, to such sum as they may deem it expedient to receive, and may in their discretion refuse to receive a deposit, and may also at any time return all or any part of any deposit, nor shall the aggregate amount of such deposits to the credit of any one individual or corporation at any time exceed five thousand dollars exclusive of accrued interest.[22]

Deposit in Name of Minor, Married Woman, or in Trust.

1063. Whenever any deposit shall be made by or in the name of any person who is a minor, or a female, being or thereafter becoming a married woman, the same shall be held for the exclusive right and benefit of such depositor, free from the control or lien of all persons whatsoever except creditors; and it shall be paid, together with the dividends or interest thereon, to the person in whose name the deposit shall be made, and the receipt or quittance of such minor or

[21] Act of May 20, 1889, Sec. 9, P. L. 246.
[22] Act of May 20, 1889, Sec. 15, P. L. 246.

female shall be a valid and sufficient release and discharge for such deposits or any part thereof to the corporation. Whenever any deposit shall be made by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall be given in writing to the bank, in the event of the death of the trustee the same, or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom such deposit was made.[23]

Surplus Limited—Excess to be Divided.

1064. Hereafter no incorporated saving fund institution or bank, not having any capital stock, and doing business exclusively for the benefit of the depositors, shall accumulate or retain, out of the net earnings or otherwise, a surplus or contingent fund which shall exceed 15 per centum of its liabilities; and it shall be the duty of the managers or directors of such corporation, at the expiration of every year hereafter, to divide *pro rata* among the depositors, whose accounts shall remain open on the first day of December, in that year, the amount of such excess so ascertained in that year, if any.[24]

Interest on Deposits.

1065. It shall be the duties of the trustees of every such corporation to regulate the rate of interest or dividends, not to exceed 5 per centum per annum upon the deposits therewith, in such manner that the depositor shall receive, as nearly as may be, all the profits of such corporation after deducting necessary expense and reserving such amount as the trustees may deem expedient as a surplus fund for the security of depositors, which, to the amount of 15 per centum per annum of their deposits, the trustees of any such corporation are hereby authorized gradually to accumulate and hold to meet any contingency or loss in its business, from the depreciation of its securities or otherwise: Provided, however, that the trustees of any such corporation may classify its depositors according to the character, amount, and duration of their dealings with the corporation, and regulate the interest or dividends allowed in such manner that each de-

[23] Act of May 20, 1889, Sec. 16, P. L. 246.
[24] Act of April 17, 1872, Sec. 1, P. L. 62.

positor shall receive the same ratable proportion, with interest or dividends, as all others of its class. It shall be unlawful for the trustees of any savings bank to declare or allow interest on any deposit for a longer period than the same has been deposited, and no dividends or interest shall be declared, credited, or paid, except by the authority of a vote of the board of trustees, duly entered upon their minutes, whereon shall be recorded the yeas and nays upon each vote, and whenever any interest or dividends shall be declared and credited in excess of the interest or profits earned and appearing to the credit of the corporation, the trustees so voting for such dividends shall be jointly and severally liable to the corporation for the amount of such excess, so declared and credited. And it shall be the duty of the trustees of any such corporation, whose surplus amounts to 15 per centum of its deposits, at least once in three years to divide, equitably, the accumulation beyond such authorized surplus, as an extra dividend to depositors in excess of the regular dividends hereinbefore provided. A notice posted conspicuously in the bank of a change in the rate of interest shall be equivalent to a personal notice.[25]

Unclaimed Deposits.

1066. Where any depositor with any saving fund, savings institution, or savings bank whatsoever, or his legal representatives, shall omit to make any demand for the amount deposited by him, or for any part thereof, for the space of thirty years after the last deposit or payment was made by or to him, or his said representatives, no action or suit shall thereafter be brought or maintained by him or them, for the amount of such deposit, against such corporation, but the same shall be paid over instead to the state treasurer for the use of the State: Provided, that no one now having any such right of action shall be so barred, until the expiration of one year from the passage of this act: And provided, that it shall be lawful for such depositor, or his legal representatives, at any time after the amount of his deposit shall have been paid over into the treasury of Commonwealth, as aforesaid, to institute and prosecute an action of debt therefor against the state treasurer, for the time being, in the Court of Common Pleas for Dauphin county; and on the recovery of judgment

[25] Act of May 20, 1889, Sec. 22, P. L. 246.

in such action, it shall be lawful for the court to issue thereon a writ, commanding such state treasurer, or his successor in office, to cause the amount thereof, with costs, but without interest, to be paid to the party entitled in the judgment, out of any unappropriated moneys in the hands of the state treasurer, or if there be no such money unappropriated, then out of the first moneys that shall be received by him, and to enforce obedience to such writ by attachment, as is provided by law, in respect to actions against counties and townships.[26]

Return of Unclaimed Deposits to be Made to Auditor-General.

1067. It shall be the duty of the treasurer, or cashier, of every incorporated saving fund, institution, or bank, in this Commonwealth, on or before the first day of November, in each year after the present, to make returns to the auditor-general of the amount of all such unclaimed deposits, as referred to in the previous section of this act, with the names and residences of the depositors, so far as known, and before the first day of January, then next ensuing, pay over the amounts so returned to the state treasurer, whose receipts therefor shall be a full and sufficient discharge to such saving fund institution, or bank, from any further liability to any such depositor.[27]

Savings Banks with Capital Stock to Issue Certificates Thereof for Transfer.

1068. All savings banks having a capital stock are hereby authorized and required to issue certificates of their said stock to all the stockholders, properly signed by the president, secretary, or treasurer of said savings bank, which certificates transferred by the party holding the same, or his duly authorized attorney, in the presence of the president, secretary, or treasurer, shall be a valid and legal transfer of the said stock.[28]

Loans and Investment of Trust Funds.

1069. It shall be lawful for the trustees of any savings bank to invest money deposited therein only as follows:

I. In the stocks or bonds of interest-bearing notes or the

[26] Act of April 17, 1872, Sec. 2, P. L. 62.
[27] Act of April 17, 1872, Sec. 3, P. L. 62.
[28] Act of April 17, 1872, Sec. 4, P. L. 62.

obligations of the United States, or those for which the faith of the United States is pledged to provide for the payment of the interest and the principal.

II. In the stocks or bonds of the Commonwealth of Pennsylvania bearing interest.

III. In the stocks or bonds of any State in the Union that has not within ten years previous to making such investments, by such corporation, defaulted in the payment of any part of either principal or interest of any debt authorized by any legislature of such State to be contracted.

IV. In the stocks or bonds of any city, county, town, or village of any State of the United States, issued pursuant to the authority of any law of the State, or in any interest-bearing obligation issued by the city or county in which such bank shall be situated.

V. In bonds and mortgages on unincumbered, improved real estate, situate in this State.[29]

Temporary Investment of Current Receipts.

1070. It shall further be lawful for any such corporation to deposit temporarily in banks, or trust companies, as provided for in the last preceding section of this act, the excess of current daily receipts over the payments, until such time as the same can be judiciously invested in the securities named; and whenever it shall appear to the auditor-general, or to any of the examiners duly authorized to visit and inspect these saving funds, that the trustees of any such corporation are violating the spirit or intent of the provisions of this act, by keeping permanently uninvested all, or an undue proportion of the money received by them, it shall be his or their duty to report the facts to the attorney-general, who shall proceed against such corporation as provided by law.[30]

Loans on Notes and Bills Forbidden.

1071. It shall not be lawful for the trustees of any savings bank, or institution, incorporated under this act, to loan the money deposited with them, or any part thereof, upon notes, bills of exchange, or drafts, or to discount any such notes, bills of exchange, or drafts.

And in all cases of loans upon real estate a sufficient bond,

[29] Act of May 20, 1889, Sec. 17, P. L. 246.
[30] Act of May 20, 1889, Sec. 18, P. L. 246.

secured by a mortgage thereon, shall be required of the borrower, and all the expenses of searches, examinations, certificates of title or appraisal of value and of drawing, perfecting, and recording papers shall be paid by such borrower.[31]

Buildings on Lands Given as Security to be Insured.

1072. Whenever buildings are included in the valuation of any real estate upon which a loan be made by any such corporation, they shall be insured by the mortgagor in such company or companies as the trustees shall direct, and the policy of insurance shall be duly assigned, or the loss made payable as its interest may appear, to such corporation, and it shall be lawful for such corporation to renew such policy of insurance from year to year, or for a longer or shorter time in case the mortgagor shall neglect to do so, and may charge the amount paid to the mortgagor. And all the necessary charges and expenses paid by such corporation for such renewal or renewals shall be paid by such mortgagor to such corporation, and shall be a lien upon the property so mortgaged, recoverable with interest from the time of payment as part of the money secured to be paid by such mortgage.[32]

Examiners—Their Powers, Expenses, and Compensation.

1073. It shall be the duty of the auditor-general, and of the Court of Common Pleas of the county in which any savings institution incorporated under this act may be carrying on business, once in two years, each to appoint an examiner to visit and examine every savings institution incorporated under this act within the limits of the county, and such examiners shall have power to administer an oath to any person whose testimony may be required on such examination, and to compel the appearance and attendance of any such person by subpœna or attachment, issuing out of said court, and all books and papers which it may be deemed necessary to examine by such examiners shall be produced, and their production may be compelled in like manner; the expense of such examination shall be paid by the corporation examined; the rate of compensation to said examiners shall

[31] Act of May 20, 1889, Sec. 19, P. L. 246.
[32] Act of May 20, 1889, Sec. 20, P. L. 246.

be fixed by the auditor-general and the court making the appointment.

And whenever it shall appear, on the report of any examination made by such visitors, either to the court or to the auditor-general, that any corporation has committed any violation of its charter, or is conducting its business and affairs in an unsafe and unauthorized manner, the said auditor-general, by an order under his hand and seal, shall direct the discontinuance of such illegal and unsafe or unauthorized practices, and whenever such corporation shall refuse, or neglect to comply with his directions in the premises, he shall communicate the fact to the attorney-general, who shall thereupon institute such proceedings as the nature of the case requires.

The proceedings instituted by the attorney-general may be by *quo warranto*, in the county where the institution is situated, for the removal of one or more of the trustees, or for the withdrawal of corporate powers, or of consolidation and merger of the corporation with any other saving corporation that may be willing to accept the trust, or of such other or further relief or correction as the particular facts communicated to him shall seem to require. And the court before such proceeding shall be instituted shall have power to grant such orders, and, in its discretion, from time to time to modify or revoke the same, and grant such relief and render such judgment as the facts or evidence in the case, and the situation of the parties and the interest involved seem to require. And the court, on being satisfied that it is necessary so to do, may appoint a receiver to take possession and to hold all the assets of such corporation until the further order of the court.[33]

Proceedings to Close Solvent Banks.

1074. Whenever the trustees of any solvent saving bank shall deem it necessary and expedient to close the business of such corporation, they may, by the affirmative vote of not less than two-thirds of the whole number of trustees, at a meeting to be called for that purpose, of which all the trustees shall have notice, declare by resolution its determination to close such business and pay the money to the depositors and creditors, and surrender the corporate franchise. The vote

[33] Act of May 20, 1889, Sec. 24, P. L. 246.

upon such resolution shall be taken by ayes and noes, and the resolution and the votes thereon shall be recorded in the minutes of the board of trustees, and a copy of the record of such proceedings, certified by the president and secretary of the corporation, shall be filed with the auditor-general. The trustees shall therefore give notice to all the depositors and creditors of the adoption of such resolution, by publication thereof in the newspaper or newspapers most likely to give the same proper publicity, and by printed or written notices, personally served upon or mailed to every depositor and creditor of such saving bank, at their last known residence, postage prepaid.

When the trustees of any such saving bank shall have paid the sums due, respectively, to all the depositors and creditors whom they can discover, and who claim their deposits or the moneys due them, it shall be the duty of such trustees to make a transcript or statement from the books of said saving bank, of the names of all the depositors and creditors who do not claim, or have not yet received, the balances to their credit or due them, and of the sums due them respectively, and to file such transcript in the auditor-general's department, and to pay over and transfer all such unclaimed and unpaid deposits, credits and money, to the treasurer of the State. The trustees shall thereupon report their proceedings, duly certified to, before the Court of Common Pleas of the county in which the corporation is situated, and upon such report and the petition of the trustees, and upon notice to the attorney-general and the auditor-general, and such other notice as the court may deem necessary, the court shall adjudge the franchise surrendered and the existence of the corporation terminated.[34]

Annual Report to Auditor-General.

1075. Every corporation incorporated under this act shall, before the thirty-first day of December of each year, report to the auditor-general of the State in writing, in such form as he shall prescribe; which report shall state the amount loaned upon bonds and mortgages, with a list of such bonds and mortgages and the location of the mortgaged premises, that have not been previously reported, and also a list of such previously reported as have since been paid wholly or

[34] Act of May 20, 1889, Sec. 30, P. L. 246.

in part, or have been foreclosed, and the amount of such payments respectively, the cost, par value, and estimated market value of all stock investments, designating each particular kind of stock, the amount loaned upon the pledge of securities, with a statement of securities held as collateral for such amounts, the amount invested in real estate, giving the cost of the same, the amount of cash on hand and on deposit in banks or trust companies, with the names of such banks or trust companies, and the amount deposited in each, and such other information as the auditor-general may require. Such report shall also state all the liabilties of such saving corporation on the day of the date of such statement, the amount due to depositors, which shall include any dividend to be credited to them for the twelve months ending on that day, and any other debts or claims against such corporation, which are or may be a charge upon its assets.

Such report shall also state the amount deposited during the year previous, and the amount withdrawn during the same period, the whole amount of interest or profit received or earned, the amount of dividends credited to depositors, together with the amount of such annual credit of interest and the amount of interest that may have been credited at other than annual periods, the number of accounts opened or re-opened, the number closed during the year, and the number of open accounts at the end of the year.

Such reports shall be verified by the oath of the president or cashier of said institution, and any willful false swearing in regard to such reports, or in regard to any reports made to the auditor-general pursuant to the provisions of this act, shall be deemed perjury, and be subject to the prosecutions and punishments prescribed by law for that offense. If any such bank shall fail to furnish to the auditor-general any report or statement required by this act at the time so required, it shall forfeit the sum of one hundred dollars per day for every day such report or statement shall be so delayed or withheld, and the auditor-general may settle an account to recover such penalty in the manner now provided by law.[35]

Change of Name.

1076. The names of any institutions incorporated under this act may be changed by complying with all the rules and

[35] Act of May 20, 1889, Sec. 23, P. L. 246.

regulations in force in the State in regard to changing the names of corporations.[36]

Taxation.

1077. The associations incorporated in pursuance of this act shall be taxed in the same manner as other corporations without capital stock.[37]

Philadelphia Savings Institution—Issue of Notes by it or any Other Savings Bank Prohibited.

1078. Every person holding one or more shares of the capital stock of the Philadelphia savings institution shall be a member of said institution, entitled to all the rights, privileges, and franchises of a member, and every person who shall become a member by virtue of this act shall cease to be a member whenever such person shall cease to hold one or more shares of said stock. And also, that the fourth article of the third section of an act, entitled "An act to recharter certain banks," passed March 25, 1824, directing the mode of voting for directors, be extended to this said institution. It shall not be lawful for the said Philadelphia savings institution, or for any other savings institution or loan company within this Commonwealth, to charge or receive as interest, commission, or otherwise, from any person or persons, either directly or indirectly, for any loan or discount more than at the rate of 6 per cent. per annum on the sum loaned or discounted. Nor shall it be lawful for the said Philadelphia savings institution, or for any other savings institution or loan company, to offer or give in payment of any loan or discount by them made, or deposit withdrawn, any certificate or other paper, payable at a future day; but shall pay all loans, discounts, and deposits in current money; nor shall it be lawful for the said Philadelphia savings institution, or for any other savings institution or loan company to issue certificates of deposits, or other papers as representatives of value, payable at a future day, for any other than deposits of money *bona fide* made with them, and all such certificates shall be for the amount of the deposits so made, and for the time for which they have actually been deposited. And if any member, director, or officer of the said Philadelphia savings insti-

[36] Act of May 20, 1889, Sec. 29, P. L. 246.
[37] Act of May 20, 1889, Sec. 31, P. L. 246.

tution, or of any other savings institution or loan company, shall advise or consent to any violation of the provisions of this section, or shall knowingly suffer them to be violated, shall forfeit and pay, for each offense, the sum of one hundred dollars, to be recovered in an action of debt, in any court of competent jurisdiction, to the use of any person suing for the same. It shall not be lawful for the said Philadelphia savings institution, or for any other savings institution or loan company, to issue any certificate of deposit, or other paper issued, payable at a future day, to any person who shall be indebted to the institution or company, either as principal or security. And if any stockholder of the Philadelphia savings institution, or of any other savings institution or loan company, shall advise or consent to, or if any member, director, or officer thereof, shall advise or consent to, or by neglect of duty, shall suffer any issue of notes, certificates, or other paper, purporting to be for the payment of any money, other than those for *bona fide* depositors, for the term they were made, as aforesaid, all such stockholders, members, directors, and officers so advising or consenting to, or suffering to be done, shall be severally liable for the payment of all such notes, certificates, or other papers.[38]

Paying Out of Certain Notes Prohibited.

1079. The thirtieth section of the act, approved April 16, 1850, entitled "An act regulating banks," be and the same is hereby extended to all incorporated banking, saving fund, trust, and insurance companies, which said companies shall be subject to the provisions of the said section: Provided, that nothing herein contained shall authorize any savings bank, trust, or other company, as aforesaid, to create any bank note or certificate in the similitude of a bank note.[39]

[38] Act of June 27, 1839, Sec. 1, P. L. 515.

[39] Act of November 16, 1856, Sec. 1, P. L. 797 (1855).

CHAPTER LXXVI.

SCIENTIFIC CORPORATIONS.

1080. Courts may Incorporate Scientific Corporations.
1081. Authority to Hold Real Estate.
1082. Income to be Limited.

Courts may Incorporate Scientific Corporations.

1080. The provisions of the several Acts of Assembly, conferring on Courts of Common Pleas authority to incorporate literary, charitable, religious, or beneficial associations, be and they are hereby extended to associations for the promotion of science or agriculture, to cemetery or burial associations, and to societies for the detection of thieves and the recovery of stolen property.[1]

Authority to Hold Real Estate.

1081. It shall be lawful for any association of citizens authorized to obtain a charter of incorporation from any court to hold real estate in their corporate capacity, not exceeding in the whole the clear yearly value or income of five thousand dollars, and that the proviso to the second section of the Act of April 8, 1833, entitled "A supplement to an act entitled 'An act to confer on certain associations of the citizens of this Commonwealth the powers and immunities of corporations or bodies politic in law,' " be and the same is hereby repealed.[2]

Income to be Limited.

1082. It shall be the duty of the court in granting a charter of incorporation for any purpose, to limit the yearly income of such corporation, other than from real estate, to such sum as in the opinion of the court will not be injurious or prejudicial to the community.[3]

[1] Act of February 20, 1854, Sec. 1, P. L. 90.
[2] Act of February 20, 1854, Sec. 2, P. L. 90.
[3] Act of February 20, 1854, Sec. 3, P. L. 90.

CHAPTER LXXVII.

SHIP BUILDING AND SHIP TRANSPORTATION COMPANIES.

1083. Incorporation.
1084. May Increase Capital Stock.
1085. Property may be Taken in Payment of Increased Stock.

Incorporation.

1083. [Companies may be incorporated for] the building of ships, vessels, or boats, and carriage of persons and property thereon.[1]

May Increase Capital Stock.

1084. It shall be lawful for any corporation organized for the building of ships, vessels, and boats, and carriage of persons and property thereon, to increase the capital stock of said corporation to any sum not exceeding five million dollars, which said capital shall be divided into shares of not more than one hundred dollars each, and all subscriptions to the capital stock of such corporation shall be paid in such instalments, and at such times as the directors may require.[2]

Property may be Taken in Payment of Increased Stock.

1085. It shall be lawful for any corporation increasing its capital under the provisions of this act, to take such real and personal estate, mineral rights, patent rights, and other property, as is necessary for the purposes of its organization and business, in payment for subscriptions to the stock so issued, and the stock so issued after payment made of the full par value thereof, shall be declared and be full paid stock, not liable to any further calls or assessments, and the holders of

[1] Act of April 29, 1874, P. L. 73.
[2] Act of April 17, 1889, Sec. 1, P. L. 37.

stock so full paid shall not be liable in their individual capacity for any of the debts of the corporation, except for debts due to laborers, mechanics, or clerks for services rendered while in the employ of the corporation, and in that case for no period exceeding six months.[3]

[3] Act of April 17, 1889, Sec. 2, P. L. 37.

CHAPTER LXXVIII.

SHIP CANAL COMPANIES.

1086. Incorporation and Powers.
1087. Capital Stock.
1088. Certified Copy Shall be Evidence of Incorporation.
1089. Stock Subscription.
1090. Increase of Capital Stock.
1091. Number of Managers.
1092. Power to Borrow Money.
1093. Right to Connect with Other Canals.
1094. Elections for Directors.
1095. Surveys, Etc., of Route of Canal—Eminent Domain.
1096. Procedure When Company Cannot Agree with Owner of Lands, Etc., for Compensation for Damages.
1097. When Viewers may be Appointed.
1098. Merger and Consolidation of Companies.
1099. Stock may be Taken by an Incorporated Company.
1100. Change of Location of Road, Bridge, Water Power, Etc.
1101. Power to Make By-Laws, Etc.
1102. Obstruction of Water Navigation.
1103. Companies Shall Build Bridges, and Keep Them in Repair.
1104. Reservoirs.
1105. Damages may be Submitted to Arbitrators.
1106. Benefits and Restrictions Contained in Laws Applicable to Such Companies.
1107. Parallel or Competing Lines of Canals or Railroads Shall not Consolidate with Canal Companies.
1108. Repeals.

Incorporation and Powers.

1086. Any number of persons, not less than twelve, five of whom at least must be citizens of this Commonwealth, may form a company for the purpose of constructing and maintaining a ship canal for public use between the great lakes and points on navigable rivers in this Commonwealth for the transportation of persons and property, and for that purpose may make and sign articles of association in which shall be stated the name of the company, the places on the great lakes and navigable rivers of this Commonwealth from and to which the canal is to be constructed or maintained and

operated, the length of such canal as near as may be, and the name of each county in the State through or into which it is intended to be made; the amount of the capital stock of the company, which shall not be less than twenty-five thousand ($25,000) dollars for every mile of canal proposed to be constructed, and the number of shares of which said capital stock shall consist, and the names and places of residence of a president, and not less than six nor more than twelve directors of the company, who shall manage its affairs for the first year, and until others are chosen in their places. Each subscriber to such articles of association shall subscribe thereto his name, place of residence, and the number of shares of stock he agrees to take in said company; on compliance with the provisions of the second section of this act, such articles of association shall be acknowledged by at least three of the directors before some officer competent to take the acknowledgment of deeds in the county where the principal office is designed to be located, and may be filed in the office of the secretary of the Commonwealth, who shall indorse thereon the day on which they were filed, and record the same in a book to be provided by him for that purpose; and thereupon the said articles of association shall become and be a charter for the said company, and the persons who have so subscribed such articles of association, and all persons who shall become stockholders in such company, shall be a corporation by the name specified in such articles of association, and shall possess the powers and privileges following, to wit:

I. To have succession by its corporate name for the period limited in its articles of association.

II. To sue and be sued, complain, and defend in any court of law or equity.

III. To make and use a common seal and alter the same at pleasure.

IV. To hold, purchase, and convey such real and personal estate as the purposes of the corporation shall require.

V. To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them suitable compensation.

VI. To make by-laws not inconsistent with any existing law for the management of its property and regulation of its affairs, and for the transfer of its stock.[1]

[1] Act of June 24, 1893, Sec. 1, P. L. 221.

Capital Stock.

1087. Such articles of association shall not be filed and recorded in the office of the secretary of the Commonwealth until at least five thousand ($5,000) dollars worth of stock for every mile of canal proposed to be made is subscribed thereto, and 10 per centum paid thereon in good faith and in cash to the directors named in said articles of association, nor until there is indorsed thereon, or annexed thereto, an affidavit, made by at least three of the directors named in said articles of association, that the amount of stock required by this section has been in good faith subscribed and 10 per centum paid in cash thereon, as aforesaid, and that it is intended in good faith to construct, maintain, and operate the canal mentioned in such articles of association, which affidavit shall be recorded with the articles of association as aforesaid.[2]

Certified Copy Shall be Evidence of Incorporation.

1088. A copy of any article of association filed and recorded in pursuance of this act, or of the record thereof, with a copy of the affidavit aforesaid indorsed thereon or annexed thereto, and certified to be a copy by the secretary of the Commonwealth or his deputy, shall be evidence of the incorporation of such company and of the facts therein stated.[3]

Stock Subscription.

1089. When such articles of association and affidavit are filed and recorded in the office of the secretary of the Commonwealth, the directors named in said articles of association shall, in case the whole of the capital stock is not subscribed, keep open books of subscription at their general office, and at such other places as they may deem expedient, to fill up the capital stock of the company, giving such notice as they may deem expedient, and shall continue to receive subscriptions until the whole of the capital stock is subscribed. At the time of subscribing every subscriber shall pay to the directors 10 per centum of the amount subscribed by him in money, and no subscription shall be received or taken without such payment.[4]

[2] Act of June 24, 1893, Sec. 2, P. L. 221.
[3] Act of June 24, 1893, Sec. 3, P. L. 221.
[4] Act of June 24, 1893, Sec. 4, P. L. 221.

Increase of Capital Stock.

1090. Whenever any canal company created and incorporated under the provisions of this act shall, in the opinion of the directors thereof, require an increased amount of capital stock in order to complete and equip their canal and carry out the full intent and meaning of their charter, they shall, if authorized by a majority of the stockholders at a meeting called for that purpose in the manner provided by law, file with the secretary of the Commonwealth a certificate setting forth the amount of such increase, and thereafter such company shall be entitled to have such increased capital as is fixed by said certificate: Provided, that the original amount of stock and increased capital shall in no case exceed the sum of three hundred thousand dollars per mile, nor shall the amount of bonds to be issued under the provisions of this act at any time exceed the sum of three hundred thousand dollars per mile, so that the sum total of stock and bonds shall not exceed six hundred thousand dollars per mile.[5]

Number of Managers.

1091. The number of managers of said company incorporated in pursuance of this act, shall be a president, and not less than six nor more than twelve directors, as shall be fixed by the incorporators thereof at their first meeting to choose directors of said company, not less than one-third of whom shall be citizens of this Commonwealth.[6]

Power to Borrow Money.

1092. Companies created under the provisions of this act shall have power to borrow money not exceeding the amount of capital stock subscribed for, and issue its bonds therefor in such amounts as shall not exceed the amount per mile hereinbefore provided for, the proceeds whereof shall be actually expended in the construction and equipment of their said canal; these bonds to be payable at such time not exceeding fifty years after the date thereof, and at such place as the directors may deem best, and may secure the payment of such bonds and interest by a mortgage upon the canal property and franchises of the said company.[7]

[5] Act of June 24, 1893, Sec. 5, P. L. 221.
[6] Act of June 24, 1893, Sec. 6, P. L. 221.
[7] Act of June 24, 1893, Sec. 7, P. L. 221.

Right to Connect with Other Canals.

1093. Companies created under the provisions of this act shall have the right to connect their canals with other canals and railroads within this Commonwealth, or at the line thereof, upon such terms as may be agreed upon by those who have the management of said canals.[8]

Elections for Directors.

1094. The elections for directors provided for in this act shall be conducted as follows, to wit:

The directors shall appoint three stockholders to be judges of said election, and to hold the same, and the persons so appointed by said directors shall not be eligible to an election as a director at said election, and shall respectively take and subscribe an oath or affirmation before some officer authorized to administer oaths to well and truly, and according to law, conduct such election to the best of their knowledge and ability, and the said judges shall decide upon the qualification of voters, and when the election is closed shall count the votes and declare who has been elected; and if at any time it so happens that an election of directors shall not be made at the time specified, the corporation shall not for that reason be dissolved, but it shall be lawful to hold and make such election of directors on any day within three months thereafter by giving at least ten days' previous notice of the time and place of holding said election in the manner aforesaid, and the directors of the preceding year shall in that case continue in office and be vested with all powers belonging to them as such until others are elected in their stead. In case of the death or resignation of a director, or any failure to elect as in case of a tie vote, the vacancy may be filled by the board of directors. At all general meetings for elections by the stockholders, each share of stock shall entitle the holder thereof to one vote, and each ballot shall have indorsed thereon the number of shares thereby represented, but no share or shares transferred within ten days next preceding any election or general meeting of the stockholders shall entitle the holder or holders thereof to vote at such election or general meeting, nor shall any proxy be received or entitle the holder to vote unless the same shall bear date and

[8] Act of June 24, 1893, Sec. 8, P. L. 221.

have been duly executed within three months next preceding such election or general meeting.[9]

Surveys, Etc., of Route of Canal—Eminent Domain.

1095. The president and directors of such company shall have power and authority by themselves, their engineers, superintendents, agents, artisans, and workmen to survey, ascertain, locate, fix, mark, and determine such route for a ship canal as they may deem expedient, and thereupon and therein to erect, construct, and establish such canal with such bridges, viaducts, or other devices as they may deem necessary or useful in the erection and construction of such canal, and in like manner by themselves or other person by them appointed or employed as aforesaid, to enter upon and into and occupy any part or all of any river, creek, and stream upon and along the route of its canal, and upon and into all land on which the said canal or docks, dock sheds, piers, quays, basins, storage and transfer sheds, sidings, depots, warehouses, offices, toll houses, steam and hydraulic cranes, and other machinery and apparatus for receiving, loading, unloading, storing, and transferring freight and passengers, and other buildings and appurtenances necessary therefor may be located, or which may be necessary or convenient for the making, construction, erection, and operation of the same, or for any purpose necessary or useful in the construction, maintenance, and repair of said canal, and therein and thereon to dig, excavate, embank and erect dams, locks, or other devices necessary in the construction of such canal, and it shall in like manner be lawful for such company, its officers, agents, engineers, contractors, or workmen, with their implements and beasts of draft or burden, to enter upon any lands adjoining or in the neighborhood of the said canal so to be constructed, and to quarry, dig, cut, take, and carry away therefrom any stone, gravel, clay, sand, earth, wood, or other suitable material necessary or proper for the construction of any bridges, viaducts, or other buildings which may be required for the use, maintenance, or repairs of said canal: Provided, that before such company shall enter upon or take possession of any such lands, rivers, creeks, streams, or material, they shall make ample compensation to the owner

[9] Act of June 24, 1893, Sec. 9, P. L. 221.

or owners thereof, or tender adequate security therefor.[10]

Procedure When Company Cannot Agree with Owner of Lands, Etc., for Compensation for Damages.

1096. When the said company cannot agree with the owner or owners of any lands, streams, water courses or material for the compensation proper for the damage done or likely to be done to or sustained by any such owner or owners of such lands, streams, or materials which such companies may enter into or upon, use or take away in pursuance of the authority hereinbefore given, or by reason of the absence or legal incapacity of any such owner or owners, if such compensation cannot be agreed upon, the Court of Common Pleas of the proper county, on application thereto by petition, either by said company or owner or owners, or any one in behalf of either, shall appoint seven discreet and disinterested freeholders of said county, neither of whom shall be residents or owners of property upon or adjoining the line of such canal, and appoint a time not less than twenty nor more than thirty days thereafter for said viewers to meet at or upon the premises where the damages are alleged to be sustained, of which time and place ten days' notice shall be given by the petitioner to the said viewers and the other party, and the said viewers, or any five of them, having been first duly sworn or affirmed faithfully, justly, and impartially to decide and a true report make concerning all matters and things to be submitted to them in relation to which they are authorized to inquire in pursuance of the provisions of this act, and having viewed the premises, they shall estimate and determine the quantity, quality, and value of such lands and property so taken or occupied, or to be taken or occupied, or the material so used or taken away, as the case may be, having a due regard to and making just allowance for the advantages which may have resulted, or which may seem likely to result to the owner or owners of said land or materials in consequence of the making or opening of said canal, and of the construction of embankments, locks, dams, buildings, works, and other devices connected therewith, and after having made a fair and just comparison of said advantages

[10] Act of June 24, 1893, Sec. 10, P. L. 221.

and disadvantages, they shall remit and determine whether any, and if any, what amount of damages has been or may be sustained, and to whom payable, and make report thereof to the said court; and if any damages be awarded and the report be affirmed by the said court, judgment shall be entered thereon, and if the amount thereof be not paid within thirty days after the entry of said judgment, execution may then issue thereon as in other cases of debt for the sum so awarded, and the costs and expenses incurred shall be defrayed by the said canal company; and each of the said viewers shall be entitled to two dollars and fifty cents per day for every day necessarily employed in the performance of the duties herein prescribed, to be paid by said canal company.[11]

When Viewers may be Appointed.

1097. The viewers provided for in this act may be appointed before or after the entry for constructing said work or taking materials therefor, and after the filing of the bond hereinbefore provided for, and upon the report of the said viewers, or any four of them being filed in said court, either party within thirty days thereafter may file his, her, or their appeal from said report to said court; after such appeal either party may put the case at issue in the form directed by said court, and the same shall then be tried by said court and a jury, and after final judgment either party may have a writ of error therefor from the Supreme Court in the manner prescribed in other cases. The said court shall have power to order what notices shall be given connected with any part of the proceedings, and may make all such orders connected with the same as may be deemed requisite. If any exceptions be filed with any appeal to the proceedings, they shall be speedily disposed of, and if allowed, a new view shall be ordered, and if disallowed, the appeal shall proceed as before provided.[12]

Merger and Consolidation of Companies.

1098. That it shall and may be lawful for any company incorporated under the provisions of this act for the purpose of constructing a ship canal, either wholly within, or partly

[11] Act of June 24, 1893, Sec. 11, P. L. 221.
[12] Act of June 24, 1893, Sec. 12, P. L. 221.

within and partly without this State, as heretofore stated between the waters of the great lakes and navigable rivers in this Commonwealth, under authority of this and any adjoining State, to merge and consolidate its capital stock, franchises, and property with any other similar company or companies organized under the laws of this or any other State, whenever the two or more canals of the companies so to be consolidated shall or may form, when constructed, a continuous line of canal; such consolidation to be effected in accordance with the laws of this Commonwealth and the laws of other States through which such canal or canals shall or may be constructed.[13]

Stock may be Taken by an Incorporated Company.

1099. It shall and may be lawful for any incorporated company of this Commonwealth or elsewhere, to subscribe for and take shares of the stock in any company incorporated under the provisions of this act, or purchase the bond or stock, or guarantee the payment of said bonds, and the interest thereon, or either principal or interest.[14]

Change of Location of Road, Bridge, Water Power, Etc.

1100. If any such canal company shall find it necessary to change the site or location of any portion of any turnpike or public road, or of any bridge, it shall cause the same to be reconstructed forthwith at its own proper cost and expense on the most favorable location and in as perfect a manner as the original road or bridge: Provided, that the damages incurred in changing the location of any such road or bridge authorized by this section shall be ascertained by such canal company as is hereinbefore provided for in regard to the location and construction of its said canal.[15]

Power to Make By-Laws, Rules, Etc.

1101. That the president and directors of such companies shall have power from time to make and ordain such by-laws, rules, and regulations as may be necessary touching the premises, especially to fix the rate of toll to be charged to vessels, boats, and other craft using such canal,

[13] Act of June 24, 1893, Sec. 13, P. L. 221.
[14] Act of June 24, 1893, Sec. 14, P. L. 221.
[15] Act of June 24, 1893, Sec. 15, P. L. 221.

to fix and determine the size and form of boats, crafts, and other vessels that shall be used for the purpose of navigating such canal, or any of its branches, to determine the time and manner of passing the locks, and the speed of vessels in passing through such canal, and what commodities shall not be transported during a want of water should such an event happen on any portion of said canal: Provided, the same be not in conflict with the Constitution and laws of this State, or of the United States.[16]

Obstruction of Water Navigation.

1102. That if any person or persons shall willfully obstruct the water navigation, or remove it [or] in any way injure or destroy said canal or its branches, feeders, or reservoirs, or any part thereof, or any thing belonging thereto, or any materials to be used in the construction thereof, such person or persons, or any person or persons assisting, aiding, or abetting in such trespass, shall forfeit and pay to said company treble the amount of damages sustained by means of such offense, to be sued for and recovered with costs of suit by action of assumpsit in any court having competent jurisdiction.[17]

Companies Shall Build Bridges, and Keep Them in Repair.

1103. It shall be the duty of such companies to build and keep in good repair suitable and convenient bridges, either permanent, pivot, draw, or hoisting, over the said canal in all such places where the said canal shall pass or cross any existing State or county road or railroad, which at the time of the construction of said canal shall be opened and used as such. And the said canal, and the works to be erected thereon and connected therewith under the provisions of this act when completed, shall forever thereafter be deemed and taken to be navigable as a public highway, free for the transportation of all goods, commodities, and produce whatsoever, on payment of the tolls to be imposed as provided by this act, and no other toll or duty whatever for the use of said canal, and the works thereon erected, shall be imposed and collected.[18]

[16] Act of June 24, 1893, Sec. 16, P. L. 221.
[17] Act of June 24, 1893, Sec. 17, P. L. 221.
[18] Act of June 24, 1893, Sec. 18, P. L. 221.

Reservoirs.

1104. All such companies shall have the right and are hereby authorized to erect and construct such reservoirs for the supply of water as may be deemed necessary, and connect the same with the main canal by feeders or branches, and for that purpose such companies shall have the right to enter upon and appropriate lands and rivers and streams necessary therefor: Provided, however, that all damages incurred by such appropriation and taking of property for the said purposes shall be ascertained and paid by such canal company in the same manner as is hereinbefore provided for in regard to the location and construction of its said canal.[19]

Damages may be Submitted to Arbitrators.

1105. That in all cases it shall be competent for said company or any person or persons, corporation or corporations, injured by the location or construction of said canal or any of its branches, reservoirs, or feeders, to submit the amount of damages to such arbitrators as they may agree upon, whose award when made and returned to the Court of Common Pleas within and for the county wherein the damages have been sustained and affirmed by said court, shall be final, and the said court may enter judgment accordingly.[20]

Benefits and Restrictions Contained in Laws Applicable to Such Companies.

1106. That such companies shall be entitled to all the benefits and subject to all the restrictions contained in the laws of this Commonwealth relating to canal companies, so far as the same are applicable to such companies and not inconsistent herewith.[21]

Parallel or Competing Lines of Canals or Railroads Shall not Consolidate with Canal Companies.

1107. No canal corporation organized or operated under this act, nor the lessees, purchasers or managers of any such corporation, shall consolidate the stock, franchises, or property of such corporation with any railroad or other canal

[19] Act of June 24, 1893, Sec. 19, P. L. 221.
[20] Act of June 24, 1893, Sec. 20, P. L. 221.
[21] Act of June 24, 1893, Sec. 21, P. L. 221.

corporations owning a parallel or competing line, nor shall such canal corporation lease, purchase, or in any way control or be leased, purchased, or controlled, directly or indirectly, by any corporation owning or representing a parallel or competing line of transportation, nor shall any officer of such corporation be an officer of any railroad or other canal corporation owning a parallel or competing line, and the question whether such canals or railroads are parallel or competing lines, and whether any such control as is hereby prohibited has been established, directly or indirectly, shall, when demanded by the party complainant, be decided by a jury upon proof and judgment of any such consolidation, lease, purchase or control, direct or indirect, of parallel and competing lines as is hereby prohibited, the officers, managers, and directors by whom such prohibited act is performed or carried out, shall each be subject to a fine of one hundred dollars for each day that such prohibited consolidation, lease, purchase, or control is in force or effect; and any person injured thereby shall be entitled to recover from the corporation offending, damages to three times the amount of pecuniary loss shown upon the second judgment or conviction showing such consolidation, lease, purchase, or control of any canal corporation by parallel and competing railroads or canals, then all shares of such corporation by the ownership of which such prohibited consolidation, lease, purchase, or control is effected or maintained shall be forfeited to the State; and it shall be the duty of the attorney-general to enforce such forfeiture by the proper proceedings. In case of such forfeiture of the shares of any canal corporation for violation of this section, the minority stockholders upon proof of their innocence of and protest against such prohibited consolidation or control, shall be permitted to independently control and manage the property of such canal. The State shall receive all dividends or profits on the forfeited shares, but such shares forfeited to and owned by the State shall not be voted at the election for directors or officers of such canal corporations, unless the property of such corporation is previously acquired by the State for legal compensation, to be divided among all shareholders in proportion to their ownership of shares, the State receiving its proper proportion of such compensation for all shares forfeited and held by it under this provision.

Any contract, agreement, arrangement, understanding, or ownership of stock, personally or by agents or otherwise, in any canal corporation organized or operated under this act, by which the property of such corporation shall fail to be operated as an independent and competing route of transportation, shall be held to be a violation of this section and subject to the penalties and forfeitures hereinbefore presented.[22]

Repeals.

1108. All acts and parts of acts inconsistent herewith be and the same are hereby repealed.[23]

[22] Act of June 24, 1893, Sec. 22, P. L. 221.
[23] Act of June 24, 1893, Sec. 23, P. L. 221.

CHAPTER LXXIX.

TELEGRAPH COMPANIES.

1109. Incorporation.
1110. Charter.
1111. Construction of Line.
1112. Condemning Property.
1113. Wire Passing Over Property—Prescription.
1114. Right to Connect with Other Lines.
1115. Acquisition of Competing Lines Prohibited.
1116. Penalty for Consolidation.
1117. Penalty for Controlling Competing Company.
1118. How forfeiture Decreed—Proceedings.
1119. Sale—Deed.
1120. Powers of Court to Ascertain Facts.
1121. Purchasers Created Corporation.
1122. Incorporation of Additional Companies.
1123. Limits.
1124. Charter—Additional Requirements.
1125. Consent of Municipality.
1126. Recovery for Damage by Wires.
1127. Compensation of Viewers.
1128. Companies to Forward All Messages.
1129. Contents of Dispatches not to be Disclosed.
1130. Original Messages to be Preserved.
1131. Charge for Delivering Messages.
1132. Operators to be Exempt from Militia Duty.
1133. Annual Reports to be Made.

Incorporation.

1109. [Corporations may be formed for] the construction and maintenance of a telegraph line.[1]

[Corporations may be formed for] constructing, maintaining, and leasing lines of telegraph for the private use of individuals, firms, corporations, municipal, and otherwise for general business, and for police, fire alarm, or messenger business, or for the transaction of any business in which electricity over or through wires may be applied to any useful purpose.[2]

[1] Act of April 29, 1874, Sec. 2, P. L. 73.
[2] Act of May 1, 1876, P. L. 90.

Charter.

1110. The charter for the incorporation of a company to maintain a telegraph line, shall, in addition to what is hereinbefore required, also state:

I. The general route of the line of telegraph.

II. The points to be connected.[3]

Construction of Line.

1111. Such corporation shall be authorized, when incorporated as hereinbefore provided, to construct lines of telegraph along and upon any of the public roads, streets, lands, or highways, or across any of the waters within the limits of this State, by the erection of the necessary fixtures, including posts, piers, or abutments for sustaining the cords or wires of such lines, but the same shall not be so constructed as to incommode the public use of said roads, streets, or highways, or injuriously interrupt the navigation of said waters; and this act shall not be so construed as to authorize the construction of a bridge across any of the waters of this State.[4]

Condemning Property.

1112. In all cases where the parties cannot agree upon the amount of damages claimed, or by reason of the absence or legal incapacity of the owner or owners, no such agreement can be made, for the right to enter upon lands or premises for the purposes named in this section, the company shall tender a bond, or have the same filed in the manner provided in the forty-first section of this act, and proceedings shall be had as therein set forth.[5]

[3] Act of April 29, 1874, Sec. 33, P. L. 92. See Section 1124, *infra*.

[4] Act of April 29, 1874, Sec. 33, Cl. 1, P. L. 92.

Authority given to a telegraph company to lease its lines, does not include the power to lease its franchises, or give its lessee the right to build new lines upon new routes: Phila. *v.* Western Union Telegraph Co., 2 W. N. C. 455 (1876). See also Telegraph Co. *v.* Wilt, 1 Phila. 270 (1851).

Telegraph companies which erect poles in the streets of a city are subject to municipal regulation, and liable to a reasonable license fee. A license fee of $1 per annum on each pole, and of $2.50 per annum on each mile of suspended wire is not unreasonable: Western Union Telegraph Co. *v.* Philadelphia, 22 W. N. C. 39 (1888); Chester *v.* W. U. Tel. Co. 154 Pa. 464 (1893); Allentown *v.* Tel. Co., 148 Pa. 117 (1892); Chester *v.* Tel. Co., 148 Pa. 120 (1892).

[5] Act of April 29, 1874, Sec. 33, Cl. 2, P. L. 92.

Wire Passing Over Property—Prescription.

1113. Whenever any wire or cable used for any telegraph, telephone, electric light, or other wire, or cable for electric purposes, is or shall be attached to, or does or shall extend upon, or over any building or land, no lapse of time whatsoever shall raise a presumption, or justify a prescription of any perpetual right to such attachment or extension.[6]

Right to Connect with Other Lines.

1114. The said telegraphic corporation shall have the right to connect its lines of telegraph with any other line operating within this State; and it shall be the duty of any corporation or person owning any other telegraph line doing business within this State, to permit such connection, and to receive dispatches from and for other telegraph lines and corporations, and from and for any individual, and on payment of their usual charges to individuals for transmitting dispatches, as established by the rates and regulations of such telegraph line, to transmit the same with impartiality and good faith, under penalty of one hundred dollars for every neglect or refusal so to do, to be sued for as debts of like amount are by law recoverable, and to be recovered with costs of suit in the name and for the benefit of the person or persons sending or desiring to send such dispatch.[7]

A telephone company which has furnished facilities to one telegraph company is bound to furnish the same facilities to every other telegraph company on similar terms.[8]

Acquisition of Competing Lines Prohibited.

1115. No such telegraph company shall be consolidated with or merged in any other company owning a competing line of telegraph, nor shall the stock or bonds of any such telegraph company, to an amount sufficient to control the same, be held or owned by any company owning a competing line of telegraph, nor shall any company owning a competing line acquire, by purchase or otherwise, any other competing line of telegraph.[9]

[6] Act of April 19, 1883, P. L. 13.

[7] Act of April 29, 1874, Sec. 33, Cl. 3, P. L. 92.

[8] Bell Telephone Co. *v.* Commonwealth, 17 W. N. C. 505 (1886). See also Com. *v.* Penna. Telephone Co., 42 Leg. Intel. 180 (1885).

[9] Act of April 29, 1874, Sec. 33, Cl. 4, P. L. 92.

Penalty for Consolidation.

1116. Whenever any telegraph corporation, telegraph association, or telegraph company, chartered for telegraph purposes, and owning and controlling a telegraph line in this State, shall consolidate with any other telegraph corporation, telegraph association, or telegraph company, chartered for telegraph purposes, and owning and controlling a competing telegraph line, the said competing telegraph lines and all franchises, and property connected therewith, for the operation of the same, within this State, shall be forfeited to and become the property of this Commonwealth.[10]

Penalty for Controlling Competing Company.

1117. Whenever any such corporation, association, or company, owning and controlling a line of telegraph, shall hold a controlling interest in the stock or bonds of any such other telegraph corporation, association, or company, owning a competing line of telegraph, or shall acquire by purchase or otherwise any other competing line of telegraph, the stock or bonds so held, and the telegraph line, together with all franchises so purchased or otherwise acquired, shall be forfeited to and become the property of the Commonwealth.[11]

How Forfeiture Decreed—Proceedings.

1118. Whenever any telegraph line, franchises, property, stocks, bonds become forfeited and escheat to the Commonwealth, under the first and second sections of this act, such forfeiture and escheat may be decreed under proceedings by *quo warranto* in any Court of Common Pleas of this State, from which decree any party interested may appeal to the Supreme Court at any time within six months after such decree, and not afterwards: Provided, that any holder of stock or bonds of any such telegraph company, who shall have been opposed to the consolidation with or sale to the competing company, or shall not have assented thereto or acquiesced therein, may be admitted as a co-defendant in such *quo warranto* proceedings, and upon proof of such opposition or want of assent and acquiescence to the satisfaction of the court, it shall be lawful for the court to so mold the decree

[10] Act of June 5, 1883, Sec. 1, P. L. 84.
[11] Act of June 5, 1883, Sec. 2, P. L. 84.

as to be without prejudice to the right of such innocent stockholder to hold his stock; and in case of an innocent bondholder that he shall be entitled to such *pro rata* share of the proceeds of the sale by the Commonwealth, as hereinafter provided, as his bonds shall bear to the whole amount outstanding; but in no case to exceed the par value of his bonds and accrued interest thereon.[12]

Sale—Deed.

1119. After a final decree of the court establishing the forfeiture and escheat to the Commonwealth, as provided in Section 3 of this act, the auditor-general shall expose to sale by public auction, at the capitol, in Harrisburg, the telegraph line, franchises, property, stocks, and bonds so escheated, after notice of said sale by publication for four successive weeks in at least one newspaper in each county through which the escheated telegraph line passes, and at said sale the said telegraph line, franchises, property, stocks, and bonds shall be sold to the highest and best bidder for cash: Provided, that no such corporation, association, or company, owning or operating a competing line of telegraph, shall become a purchaser at said sale; and upon the payment of the price at which the same shall be thus sold, and the filing with the secretary of state of the certificate of the state treasurer, that the money has been so paid, together with the certificate of the auditor-general setting forth the fact and terms of the sale, a deed for the telegraph line, franchises, property, stocks, and bonds so sold, shall be executed in the name and under the seal of the Commonwealth, to the purchaser or purchasers, signed by the governor, and attested by the secretary of state, which deed shall vest in the purchaser or purchasers a valid and sufficient title thereto.[13]

Powers of Court to Ascertain Facts.

1120. The said court shall have power to summon the officers of any such corporations, associations, or companies, or either of them, by subpœna, citation, or otherwise, as the said court shall direct, to appear before said court and produce all of its or their books and papers, and to examine them upon oath, to ascertain whether they are or any of

[12] Act of June 5, 1883, Sec. 3, P. L. 84.
[13] Act of June 5, 1883, Sec. 4, P. L. 84.

them have violated the twelfth section of the sixteenth article of the Constitution of this Commonwealth, and shall have power to enforce their appearance by attachment, as in case of other witnesses, or the said court may direct to be filed a bill of discovery in the said court against the officers, directors, or trustees of any such corporations, associations, or companies, or either of them, which the defendants therein shall answer under the compulsion usual in such cases, and the evidence so taken and their answers may be used, in the said proceedings, to assert the rights of the Commonwealth.[14]

Purchasers Created Corporation.

1121. The purchaser or purchasers for or on whose account any telegraph line, franchises, or property shall be purchased from the Commonwealth, as authorized by this act, where an organization is effected and a certificate filed as required in the proviso hereto, shall be and they are hereby constituted a body politic and corporate, and shall be vested with all the right, title, interest, property, claim, and demand in law and equity of, in, and to such telegraph line, with its appurtenances, and with all the rights, powers, immunities, privileges, and franchises of the said corporation, association, or company owning the said telegraph line, property, and franchises at and immediately before the forfeiture thereof under Sections 1 and 2 of this act. And the person or persons, for or on whose account any such telegraph line, property, and franchises shall be purchased, shall meet, within thirty days after the delivery of the deed from the Commonwealth, public notice of the time and place of such meeting having been given, at least once a week for two weeks, in at least one newspaper published in the city of Harrisburg, and organize said new corporation by electing a president and board of six directors (to continue in office until the first Monday of May succeeding such meeting, when, and annually thereafter, on the said day a like election for a president and six directors shall be held to serve for one year), and shall adopt a corporate name and common seal, determine the amount of the capital stock thereof, and shall have power and authority to make and issue certificates therefor to the purchaser or purchasers aforesaid, to the amount of their re-

[14] Act of June 5, 1883, Sec. 5, P. L. 84.

spective interests therein, in shares of fifty dollars each; and may then, or at any time thereafter, create and issue preferred stock to such an amount, and on such terms, as they may deem necessary; and from time to time issue bonds, at a rate of interest not exceeding 7 per centum, to any amount not exceeding their capital stock, and to secure the same by one or more mortgages upon the telegraph line, property, and franchises, or on any part or parts thereof: Provided, that the person or persons for or on whose account the purchase is made, shall organize by the election of a president and a board of directors as above provided within three calendar months after the delivery of the deed from the Commonwealth, and within one calendar month after such organization make a certificate thereof under its common seal, attested by the signature of its president, specifying the date of such organization, the corporate name adopted, the amount of capital stock, and the names of the president and directors, and transmit the said certificate to the secretary of state at Harrisburg, to be filed in his office, and there remain of record, and a certified copy of such certificate, so filed, shall be evidence of the corporate existence of said new corporation.[15]

Incorporation of Additional Companies.

1122. Corporations of the second class may be formed and created in the manner provided for by the act to which this is a supplement, and with all the rights and powers therein granted, for the purpose of constructing, maintaining, and leasing lines of telegraph for the private use of individuals, firms, corporations, municipal, and otherwise, for general business, and for police, fire alarm, or messenger business, or for the transaction of any business in which electricity over or through wires may be applied to any useful purpose.[16]

Limits.

1123. The business of such corporation may be wholly within, or partly within and partly without the limits of any city, borough, or township in this State, or partly in any other State or States.[17]

[15] Act of June 5, 1883, Sec. 6, P. L. 84.
[16] Act of May 1, 1876, Sec. 1, P. L. 90.
[17] Act of May 1, 1876, Sec. 2, P. L. 90.

Charter—Additional Requirements.

1124. That in lieu of the requirements of the first paragraph of the thirty-third section of the act to which this is supplementary, approved April 29, 1874, the charter for the incorporation of companies under the provisions of this act shall state:

First. In what counties in this State it is proposed to carry on business.

Second. In what other States it is proposed to carry on business.[18]

Consent of Municipality.

1125. That before the exercise of any of the powers given under this act, application shall be first made to the municipal authorities of the city, town, or borough, in which it is proposed to exercise said powers, for permission to erect poles, or run wires on the same, or over, or under any of the streets, lanes, or alleys of said city, town, or borough, which permission shall be given by ordinance only, and may impose such conditions and regulations as the municipal authorities may deem necessary.[19]

Recovery for Damage by Wires.

1126. From and after the passage of this act, it shall be lawful, whenever any telegraph, telephone, or electric light company shall have erected its poles and lines along any turnpike, public road, street, lane, alley, or highway in this Commonwealth, for the owner or owners of land adjoining said turnpike or public road, who may claim to be damaged by the erection or maintenance of said lines by reason of the cutting of trees, whether planted in the said turnpike, public road, street, lane, alley, or highway, or on inclosed or uninclosed land adjoining the same, to petition the Court of Common Pleas of the county in which said damage shall be alleged to have been committed, whereupon the said court shall appoint three impartial men, citizens of the county in which said damages shall be alleged, as viewers, who shall, after having been duly sworn or affirmed to the faithful performance of their duties, assess the damages done, if any, to the petitioner, and shall report the same to the said court, at the first

[18] Act of May 1, 1876, Sec. 3, P. L. 90.

[19] Act of June 25, 1885, P. L. 164, amending Act of May 1, 1876, Sec. 4, P. L. 90. See note to Section 1111, *supra*.

week of the next regular term thereof, after the said appointment, which report shall, upon its presentation as aforesaid, be confirmed *nisi*, and if no appeal be entered to the same on or before ten days from the Saturday of the week in which the same is presented, it shall then be confirmed absolutely, and judgment entered by the prothonotary of the said court upon the same against the said company.[20]

Compensation of Viewers.

1127. The compensation of the viewers provided for by the first section of this act shall be the same as is now provided for road viewers, and shall be paid by the defendant company, where damages are awarded, otherwise by the petitioner: Provided, that the provisions of this act shall not apply to the police patrol or fire department telegraph lines.[21]

Companies to Forward All Messages.

1128. The various telegraph companies within the limits of this State shall be required to forward and receive over their lines all messages that may be offered for transmission by individuals or incorporated companies: Provided, the parties offering such messages or dispatches tender, for the transmission thereof, the amount of the usual fee for such transmission. And in case of a refusal or neglect on the part of any of the agents of the telegraph lines in this State, to send or receive in their regular order, except as hereinbefore excepted, such messages or dispatches, by telegraph, the company shall be liable to a fine of one hundred dollars for each and every message so refused or neglected, to be sued for and recovered before any justice of the peace of this Commonwealth, as debts of like amount are recovered; the one-half of said fine to go to the State, and the other half to the party suing for the same: And provided further, that in any suit to be brought for the recovery of said fine, notice served on the president, director, agent, or either of them, shall be sufficient.[22]

[20] Act of June 2, 1891, Sec. 1, P. L. 170.

[21] Act of June 2, 1891, Sec. 2, P. L. 170.

[22] Act of March 29, 1849, Sec. 15, P. L. 263.

A telegraph company is liable in damages for a pecuniary loss caused by negligence in transmitting a telegram: Conrad *v.* W. U. Tel. Co., 162 Pa. 204 (1894); Koons *v.* W. U. Tel. Co., 102 Pa. 164 (1883); Com. *v.*

Contents of Dispatches not to be Disclosed.

1129. It shall not be lawful for any person connected with any line of telegraph within this Commonwealth, whether as superintendent, operator, or in any other capacity whatsoever, to use or cause to be used, or make known or cause to be made known the contents of any dispatch of whatsoever nature, which may be sent or received over any line of telegraph in this Commonwealth, without the consent or direction of either the party sending or receiving the same; and all dispatches which may be filed at any office in this Commonwealth for transmission to any point shall be so transmitted without being made public, or their purport in any manner divulged at any intermediate point, on any pretence whatever; and in all respects the same inviolable secrecy, safe-keeping, and conveyance shall be maintained by the officers and agents employed upon the several telegraph lines of this Commonwealth, in relation to all dispatches which may be sent or received, as is now enjoined by the laws of the United States, in reference to the ordinary mail service: Provided, that nothing in this act contained shall be so construed as to prevent the publication, at any point, of any dispatch of a public nature which may be sent by any person or persons with a view to general publicity.[23]

W. U. Tel. Co., 14 W. N. C. 535 (1884); United States Tel. Co. *v.* Wenger, 55 Pa. 262 (1867) ; New York & Washington Printing Tel. Co. *v.* Dryburgh, 35 Pa. 298 (1860) ; Wolf *v.* W. U. Tel. Co., 62 Pa. 83 (1869) ; Western U. Tel. Co. *v.* Richman, 19 W. N. C. 569 (1887); Western U. Tel. Co. *v.* Stevenson, 128 Pa. 442 (1889) ; Fergusson *v.* Anglo-Am. Tel. Co., 151 Pa. 211 (1892), 178 Pa. 377 (1896); West. U. Tel. Co. *v.* Landis, 21 W. N. C. 38 (1888) ; Tobin *v.* Tel. Co., 146 Pa. 375 (1892).

Damages cannot be recovered for mere loss of credit: Smith *v.* West. U. Tel. Co., 150 Pa. 561 (1892).

Only nominal damages can be recovered for delay in sending cipher message where the cipher is not intelligible to the company : Fergusson *v.* Anglo-Am. Tel. Co., 178 Pa. 377 (1896).

A stipulation in a telegraph blank that claims for damages must be presented in writing within sixty days, is in ordinary cases reasonable ; but where the message is sent 15,000 miles, such a stipulation will not be enforced: Conrad *v.* W. U. T. Co., 162 Pa. 204 (1894).

Furnishing "commercial news" is not within the corporate duty of a telegraph company : Sterrett *v.* Phila. Local Tel. Co., 18 W. N. C. 77 (1886). See Davis *v.* Electric Reporting Co., 19 W. N. C. 567 (1887).

[23] Act of April 14, 1851, Sec. 7, P. L. 612.

Original Messages to be Preserved.

1130. It shall be the duty of all owners, superintendents, and operators, to preserve the originals of all messages sent from such office, other than those intended for publication, for at least three years, and to produce the same in evidence, whensoever duly subpœnaed to do so, by the individual or individuals, or counsel of the individual or individuals sending or receiving a copy of such messages, in any court of justice, or before any committee of the legislature, and where the same shall be decided by such court or committee to be material to any issue or matter there to be tried or determined, under the like penalty as in other cases: Provided, that the confidential communications between attorney and client, so transmitted, shall in no case be divulged.[24]

Charge for Delivering Messages.

1131. The charge by all telegraph companies organized under this act, and those accepting the provisions thereof, for the transmission of any telegraphic dispatch, shall include the charge for the delivery thereof, and no extra or additional charge shall be made for such delivery.[25]

Operators to be Exempt from Militia Duty.

1132. The operators, assistant operators, clerks, and other persons in the employ of the different telegraph companies in the State of Pennsylvania, while doing duty in the offices of said companies, or along the routes of their telegraph lines, shall be exempt from militia duties and serving on juries, and from any fine or penalty for neglect thereof.[26]

Annual Reports to be Made.

1133. The provisions of the act entitled "An act requiring railroad companies to make uniform reports to the auditor-general," approved April 4, 1859, be and the same are hereby extended to all telegraph companies owning, leasing, or controlling lines in whole or in part within the limits of this Commonwealth.[27]

[24] Act of May 8, 1855, Sec. 2, P. L. 531.
[25] Act of April 29, 1874, Sec. 33. Cl. 5, P. L. 92.
[26] Act of April 8, 1862, Sec. 1, P. L. 325.
[27] Act of April 14, 1868, Sec. 1, P. L. 96.
The report is now made to the secretary of internal affairs.

CHAPTER LXXX.

TITLE INSURANCE AND TRUST COMPANIES.

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Powers.

1134. Companies which may have been heretofore, or which may hereafter be, incorporated under the provisions of this act for the insurance of owners of real estate, mortgagees, and others interested in real estate, from loss by reason of defective titles, liens, and incumbrances, shall have the power and right:

I. *To Insure Titles.*—To make insurances of every kind pertaining to or connected with titles to real estate, and to make, execute, and perfect such and so many contracts, agreements, policies, and other instruments as may be required therefor.

II. *To Receive and Dispose of Property.*—To receive and hold on deposit and in trust and as security estate, real and personal, including the notes, bonds, obligations of States, individuals, companies, and corporations, and the same to

purchase, collect, adjust and settle, sell and dispose of in any manner without proceeding in law or equity, and for such price, and on such terms as may be agreed on between them and parties contracting with them: Provided, that nothing herein contained shall authorize said companies to engage in the business of banking.

III. *To Insure Fidelity and Act as Depository.*—To make insurance for the fidelity of persons holding places of responsibility and of trust, and to receive upon deposit for safe-keeping jewelry, plate, stocks, bonds, and valuable property of every description upon terms as may be agreed upon.

IV. To act as assignees, receivers, guardians, executors, administrators, and to take, accept, and execute trusts of every description not inconsistent with the laws of this State, or of the United States, and to receive deposits of moneys and other personal property, and issue their obligations therefor, to invest their funds in and to purchase real and personal securities, and to loan money on real and personal securities.[1]

V. *To Act as Agents, Etc.*—To act as agents for the purpose of issuing or countersigning the certificates of stock, bonds, or other obligations of any corporation, association, or municipality, State, or public authority, and to receive and manage any sinking fund thereof on such terms as may be agreed upon.

VI. *To Become Surety.*—To make sole surety in any case where by law one or more sureties may be required for the faithful performance of any trust, office, duty, action, or engagement.

VII. *Power to Receive and Convey Real Estate.* To take, receive, and hold any and all such pieces of real property as may have been, or may hereafter be, the subject of any insurance made by such companies under the powers conferred by their charter, and the same to grant, bargain, sell, convey, and dispose of in any such manner as they see proper.

VIII. To purchase and sell real estate, and take charge of the same.

IX. *To Act as Security.*—To act as security for the faith-

[1] Act of May 9, 1889, Sec. 1, Cl. 1, P. L. 159, amending the Act of April 29, 1874, Sec. 29, P. L. 84. See page 15, *supra*.

ful performance of any contract entered into with any person or municipal or other corporation, or with any State or government, by any person or persons, corporation or corporations.

X. To become sole security for the faithful performance of the duties of any national, State, county, or municipal officer, and to execute such bonds or recognizances as may be required by law in such cases.

XI. To become security for the faithful performance of the duties of any clerk or employee of any corporation, company, firm, or individual.

XII. To become security for the payment of all damages that may be assessed and directed to be paid for lands taken in the building of any railway, or for the purposes of any railway, or for the opening of streets or roads, or for any purpose whatever where land or other property is authorized by law to be taken.

XIII. To become security upon any writ of error or appeal, or in any proceeding instituted in any court of this Commonwealth, in which security may be required: Provided, however, that nothing in this act shall be so construed as to dispense with the approval of such body, corporation, court, or officer, as is by law now required to approve such security.[2]

The banking department of the State has supervision over trust companies, and every corporation having power to receive money on deposit and incorporated under the laws of Pennsylvania.[3]

Title insurance companies have no power under their charters to engage in the business of conveyancing.

In a case where a title insurance company was sued upon a policy of title insurance defense was made that the conveyancing of the property insured had been done by the plain-

[2] Act of May 29, 1895, P. L. 127, amending Act of May 9, 1889, Sec. 1. In incorporating a trust company the former practice was to obtain a charter as a real estate title insurance company under the provisions of the Act of 1874, and then after completing the organization to accept the provisions of the Act of May 24, 1881: Bryn Mawr Trust Co., 6 Pa. C. C. R. 404 (1889). The same practice still prevails except that the provisions of the Act of May 9, 1889, must now be accepted.

[3] Certain Trust Co., 11 Pa. C. C. R. 489 (1892).

tiff's conveyance. It was held that this defense did not avail, Judge ARNOLD saying: "This defense is based on the notion that not only may title insurance companies do conveyancing, but they must be employed to do it in order to hold them on their policies. This is a great mistake. They have no right whatever to do conveyancing, draw deeds, write wills, or the like. Their conduct in this respect is an usurpation on the Commonwealth. No Act of Assembly authorized them to do any such acts, and in these days of corporate greed, it is well to remind them that the law under which they are allowed to insure titles, and to make such contracts, agreements, policies, and other instruments as may be required therefor (Act of May 9, 1887, P. L. 159) authorizes them to make and perfect only such contracts as may be required to insure title, and not to make or convey them. The argument that unless they are permitted to draw deeds and convey titles, they will have none to insure, is as specious as would be an argument that a fire insurance company should be allowed to make contracts to build houses in order to insure them. The consequence of the usurpation is not only the diversion of their legitimate business from lawyers and conveyancers, but the best school of the students of law, the law of real estate, is being destroyed. Knowledge of the foundation of the law and accuracy and precision in the use of law language is becoming obsolete. It is bad enough that such usurpations are tolerated without interference, but it is much worse to see the denial of them set up as a defense on a policy of insurance, which the company is authorized to issue, and on which, as in this case, it is clearly liable."[4]

Requisites Prior to Exercise of Powers.

1135. Provided, however, that before exercising any of the powers hereby conferred, each such corporation shall have a paid-up capital of not less than one hundred and twenty-five thousand dollars, an affidavit of which fact, made by the treas-

[4] Gauler *v.* Solictors' Loan & Trust Co., 9 Pa. C. C. R. 634 (1891).

urer thereof, shall be filed in the office of the secretary of the Commonwealth, and each such company, heretofore or hereafter incorporated, shall file in the office of the secretary of the Commonwealth a certificate of its acceptance hereof, made by formal resolution adopted at a regular or called meeting of the directors, trustees, managers, or other proper officers thereof, and certified under the corporate seal of such company, and a copy of such affidavit and of such resolution certified under the seal of the office of the secretary of the Commonwealth shall be evidence of compliance with the requirements hereof.[5]

Capital to be Security.

1136. Whenever such companies shall receive and accept the office or appointment of assignee, receiver, guardian, executor, administrator, or be directed to execute any trust whatever, the capital of the said company shall be taken and considered as the security required by law for the faithful performance of their duties as aforesaid, and shall be absolutely liable in case of any default whatever.[6]

Fiduciaries may Deposit for Safekeeping.

1137. That any executor, administrator, guardian, or trustee having the custody or control of any bonds, stock, securities, or other valuables belonging to others, shall be authorized to deposit the same for safe-keeping with said companies.[7]

Moneys Paid Into Court.

1138. Every court into which moneys may be paid by parties, or be brought by order or judgment may, by order, direct the same to be deposited with any such corporation.[8]

Court may Investigate Affairs of Company.

1139. That whenever any court shall appoint said companies assignee, receiver, guardian, executor, administrator, or to execute any trust whatever, the said court may, in its discretion, or upon the application of any person interested,

[5] Act of May 9, 1889, Sec. 1, Cl. 1, P. L. 161.
[6] Act of May 9, 1889, Sec. 1, Cl. 2, P. L. 161.
[7] Act of May 9, 1889, Sec. 1, Cl. 3, P. L. 161.
[8] Act of May 29, 1895, Sec. 2, P. L. 127.

appoint a suitable person to investigate the affairs and management of the company so appointed, who shall report to such court the manner in which its investments are made, and the security afforded to those by or for whom its engagements are held, and the expense of such investigation shall be defrayed by the said company, or the court may, if deemed necessary, examine the officers of said company under oath or affirmation as to the security aforesaid.[9]

Separation of Trust Funds.

1140. The said companies shall keep all trust funds and investments separate and apart from the assets of the companies, and all investments made by the said companies as fiduciaries shall be so designated as that the trust to which such investment shall belong shall be clearly known.[10]

Increase of Capital Stock.

1141. That whenever such companies (companies authorized by their charter to act as trustees, receivers, assignees, guardians, and committees), shall desire to increase their capital stock, they may do so according to the forms prescribed by law: Provided, the amount of capital stock after such increase shall not exceed two million dollars, and may change the par value of the shares to one hundred dollars each.[11]

Acceptance of Constitution.

1142. Such companies (companies authorized by their charter to act as trustees, receivers, assignees, guardians, and committees) before exercising any of the powers conferred by this act, shall first accept the provisions of the Constitution of this Commonwealth, adopted December 16, 1873, and shall file with the secretary of the Commonwealth a certificate of such acceptance, in writing, under their duly authenticated seal.[12]

Oath of Officers.

1143. In all cases where a corporation is or shall be

[9] Act of May 9, 1889, Sec. 1, Cl. 4, P. L. 161.
[10] Act of May 9, 1889, Sec. 1, Cl. 5, P. L. 161.
[11] Act of June 11, 1885, Sec. 2, P. L. 111.
[12] Act of June 11, 1885, Sec. 3, P. L. 111.

charged with the execution of any trust, the president, vice-president, trust officers, secretary, treasurer, or actuary of such corporation, shall make the usual oath or affirmation directed to be taken by private persons in such other like cases.[13]

Surety Company Can Act as Surety of Guarantor.

1144. Whenever any bond, undertaking, recognizance, or other obligation is, by law, or the charter, ordinances, rules, or regulations of any municipality, board, body, organization, or public officer, required or permitted to be made, given, tendered, or filed with surety or sureties, and whenever the performance of any act, duty, or obligation, or the refraining from any act, is required or permitted to be guaranteed, such bond, undertaking, obligation, recognizance, or guarantee will be executed by a surety company qualified to act as surety or guarantor as hereinafter provided, and such execution by such company of such bond, undertaking, recognizance, obligation, or guarantee shall be in all respects a full and complete compliance with every requirement of every law, charter, ordinance, rule, or regulation, that such bond, undertaking, obligation, recognizance, or guarantee shall be executed by one surety, or by one or more sureties, or that such sureties shall be residents or householders or freeholders, or either, or both, or possess any other qualification.[14]

Company Must be Qualified to Act as Surety Under Existing Laws.

1145. That such company, to be qualified to so act as surety or guarantor, must be authorized under the laws of any State or country where incorporated; and its charter to guarantee the fidelity of persons holding places of public or private trust, and to guarantee the performance of contracts other than insurance policies, and to execute bonds and undertakings required or permitted in actions or proceedings or by law allowed, must comply with the requirements of the laws of this State applicable to such company in doing business therein, must have a paid up, unimpaired, and safely invested capital of at least two hundred and fifty thousand

[13] Act of February 16, 1877, P. L. 3.
[14] Act of June 26, 1895, Sec. 1, P. L. 343.

dollars, must have at least one hundred thousand dollars invested in securities created by the laws of the United States, or by or under the laws of the State or country wherein it is incorporated, or in other safe, marketable, and interest-bearing stocks and securities, the value of which shall be at or above par, and deposited with or held by the insurance commissioner or other corresponding officer of the State or country where such company is domiciled, or any State of the United States in which it is authorized to transact business, in trust for the benefit of the holders of the obligations of such company; its liabilities must not exceed its available assets, which said liabilities, however, shall be taken to be its capital stock, its outstanding debts, and a premium reserved equal to 50 per centum of the annual premium on all outstanding risks in force; such company shall also, before transacting business in this State under this act, file with the insurance commissioner a certified copy of its charter or act of incorporation, a written application to be authorized to do business under this act, and a statement signed and sworn to by its president, or one of its vice-presidents, and its secretary, or one of its assistant secretaries, stating the amount of its paid up cash capital, particularly each item of investment, the amount of premium on existing bonds upon which it is surety, the amount of liability for unearned portion thereof estimated at 50 per centum of the annual premium on all outstanding premiums for one year or less, and *pro rata* for terms of more than one year, stating also the amount of its outstanding debts of all kinds; and if such company is incorporated under the laws of any other State or country than this State, it shall, in addition thereto, file a power of attorney appointing some resident of this State upon whom service process may be made as required by existing laws, whereupon, if the insurance commissioner be satisfied that such company is solvent, and has the cash capital herein provided for, and surplus assets in excess of its capital stock, its outstanding debts and the premium reserve specified, and that it has, in all respects, complied with and is qualified under this act, he shall issue to such company and to each of its agents in this State his certificate that it is authorized to become and be accepted as sole surety on all bonds, undertakings, and obligations required or permitted by law or the charter, ordinances, rules, or regulations of any municipality,

board, body, organization, or public officer, which said certificate shall be conclusive proof of the solvency and credit of such company for all purposes and of its right to be so accepted as such sole surety and its sufficiency as such. Such company shall also, annually, in the month of January, file with the insurance commissioner a statement similar to that hereinbefore in this section provided for, and shall also furnish him with a certificate from the officer with whom the deposit herein mentioned is required to be made, describing such securities so deposited and the manner in which they are held by him, and stating that he is satisfied that such securities are fully worth one hundred thousand dollars, and also shall furnish the insurance commissioner with such other information touching the condition and credit as he may require, signed and sworn to as in this section required.[15]

Deposit of Moneys for Which Sureties are Liable.

1146. That it shall be lawful for any party of whom a bond or undertaking is required to agree with his sureties for the deposit of any or all moneys for which said sureties are or may be held responsible with a trust company authorized by law to receive such deposit, if such deposit is otherwise proper, and for the safe-keeping of any and all other depositable assets for which said sureties are or may be held responsible with a safe deposit company authorized by law to do business as such, in such manner as to prevent the withdrawal of such moneys and assets, or any part thereof, except with the written consent of such sureties, or an order of the court made on such notice to them as such court may direct.[16]

Company Cannot Deny Corporate Power.

1147. That no company having signed such a bond, undertaking, or obligation shall be permitted to deny its corporative power to execute such instruments or incur such liability in any proceeding to enforce liability against it thereunder.[17]

[15] Act of June 26, 1895, Sec. 2, P. L. 343.
[16] Act of June 26, 1895, Sec. 3, P. L. 343.
[17] Act of June 26, 1895, Sec. 4, P. L. 343.

Repeal.

1148. That all laws or parts of laws inconsistent herewith are hereby repealed.[18]

Companies to Which the Rights Conferred by Act of April 29 1874, and the Supplement of May 9, 1889, are Extended.

1149. That companies heretofore incorporated under the laws of this Commonwealth, with a paid-up capital of not less than one hundred and twenty-five thousand dollars, and authorized by their charters to make insurance for the fidelity of persons holding places of responsibility and trust, to receive for safe-keeping stocks, bonds, and other valuable personal property, to receive and hold on deposit and in trust real and personal estate, to receive money and allow interest thereon, and to purchase and sell notes, bonds, or other obligations, to adjust and settle accounts of estates, individuals, and corporations, shall be authorized to exercise all the additional rights, powers, and privileges conferred upon companies incorporated under the provisions of Section 29 of said act, approved April 29, 1874, and of the supplement thereto, entitled "An act supplementary to an act, entitled 'An act to provide for the incorporation and regulation of certain corporations,' approved April 29, A. D. 1874, amending the twenty-ninth section of said act so as to provide for the further regulation of and granting additional powers to all corporations now or hereafter incorporated under the provisions of said act for the insurance of owners of real estate, mortgagees, and others interested in real estate from loss by reason of defective titles, liens, and incumbrances," approved May 9, A. D. 1889, which reads as follows:

"Section 1. Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That Section 29 of an act approved April 29, 1874, entitled 'An act to provide for the incorporation and regulation of certain corporations,' which reads as follows:

"Insurance of Titles.

"Section 29. Companies incorporated under the provisions of this act for the insurance of owners of real estate, mortgagees, and others interested in real estate from loss by

[18] Act of June 26, 1895, Sec. 5, P. L. 343.

reason of defective titles, liens, and incumbrances shall have the power and right to make insurances of every kind pertaining to or connected with titles to real estate, and shall have the power and right to make, execute, and perfect such and so many contracts, agreements, policies, and other instruments as may be required therefor," be and the same is hereby amended and extended so as to be and read as follows:

Insurance of Titles.

Section 29. Clause 1. Companies which may have been heretofore, or which may hereafter be, incorporated under the provisions of this act for the insurance of owners of real estate, mortgagees, and others interested in real estate from loss by reason of defective titles, liens, and incumbrances, shall have the power and right:

First. To make insurances of every kind pertaining to or connected with titles to real estate, and to make, execute, and perfect such and so many contracts, agreements, policies, and other instruments as may be required therefor.

Second. To receive and hold on deposit and in trust and as security estate, real and personal, including the notes, bonds, obligations of States, individuals, companies, and corporations, and the same to purchase, collect, adjust, and settle, sell and dispose of in any manner, without proceedings in law or equity, and for such price, and on such terms as may be agreed on between them and parties contracting with them: Provided, that nothing herein contained shall authorize said companies to engage in the business of banking.

Third. To make insurance for the fidelity of persons holding places of responsibility and of trust, and to receive upon deposit for safe-keeping jewelry, plate, stocks, bonds, and valuable property of every description, upon terms as may be agreed upon.

Fourth. To act as assignees, receivers, guardians, executors, administrators, and to execute trusts of every description not inconsistent with the laws of this State or of the United States.

Fifth. To act as agents for the purpose of issuing or countersigning the certificates of stock, bonds, or other obligations of any corporation, association, or municipality, State or public authority, and to receive and manage any sinking fund thereof on such terms as may be agreed upon.

Sixth. To become sole surety in any case where by law one or more sureties may be required for the faithful performance of any trust, office, duty, action, or engagement.

Seventh. To take, receive, and hold any and all such pieces of real property as may have been, or may hereafter be, the subject of any insurance made by such companies under the powers conferred by their charter, and the same to grant, bargain, sell, convey, and dispose of in any such manner as they see proper.

Eighth. To purchase and sell real estate and take charge of the same.

Ninth. To act as security for the faithful performance of any contract entered into with any person, or municipal or other corporation, or with any State or government, by any person or persons, corporation or corporations.

Tenth. To become sole security for the faithful performance of the duties of any national, State, county, or municipal officer, and to execute such bonds or recognizances as may be required by law in such cases.

Eleventh. To become security for the faithful [performance of the] duties of any clerk or employee of any corporation, company, firm, or individual.

Twelfth. To become security for the payment of all damages that may be assessed and directed to be paid for lands taken in the building of any railway, or for the purposes of any railway, or for the opening of streets or roads, or for any purpose whatever where land or other property is authorized by law to be taken.

Thirteenth. To become security upon any writ of error or appeal, or in any proceeding instituted in any court of this Commonwealth, in which security may be required: Provided however, that nothing in this act shall be so construed as to dispense with the approval of such body, corporation, court, or officer, as is by law now required to approve such security: Provided however, that before exercising any of the powers hereby conferred, each such corporation shall have a paid-up capital of not less than one hundred and twenty-five thousand dollars, an affidavit of which fact, made by the treasurer thereof, shall be filed in the office of the secretary of the Commonwealth, and each such company, heretofore or hereafter incorporated, shall file in the office of the secretary of the Commonwealth a certificate of its ac-

ceptance hereof, made by formal resolution adopted at a regular or called meeting of the directors, trustees, managers, or other proper officers thereof, and certified under the corporate seal of such company, and a copy of such affidavit and of such resolution certified under the seal of the office of the secretary of the Commonwealth, shall be evidence of compliance with the requirements hereof.

Clause II. That whenever such companies shall receive and accept the office or appointment of assignee, receiver, guardian, executor, administrator, or to be directed to execute any trust whatever, the capital of the said company shall be taken and considered as the security required by law for the faithful performance of their duties as aforesaid, and shall be absolutely liable in case of any default whatever.

Clause III. That any executor, administrator, guardian, or trustee, having the custody or control of any bonds, stock, securities, or other valuables, belonging to others, shall be authorized to deposit the same for safe-keeping with said companies.

Clause IV. That whenever any court shall appoint said companies assignee, receiver, guardian, executor, administrator, or to execute any trust whatever, the said court may in its discretion, or upon the application of any person interested, appoint a suitable person to investigate the affairs and management of the company so appointed, who shall report to such court the manner in which its investments are made, and the security afforded to those by or for whom its engagements are held, and the expense of such investigation shall be defrayed by the said company; or the court may, if deemed necessary, examine the officers of said company under oath or affirmation as to the security aforesaid.

Clause V. The said companies shall keep all trust funds and investments separate and apart from the assets of the companies, and all investments made by the said companies as fiduciaries shall be so designated as that the trust to which such investments shall belong shall be clearly known.

Section 2. That any company entitled to the benefits of this act and desirous of availing itself of the same, shall furnish the affidavit as to paid-up capital required by the said supplementary act, and conform to all other conditions and requirements thereof applicable to companies organized

under the provisions of the said act, approved April 29, A. D. 1874, and the aforesaid supplement thereto.[19]

Charges of Surety Companies.

1150. Any receiver, assignee, guardian, committee, trustee, executor, or administrator, required by law or by the order of any court to give a bond as such, may include as a part of the lawful expense of executing his trust such reasonable sum paid a company, authorized under the laws of this State so to do, for becoming his surety on such bond as may be allowed by the court in which he is required to account, not exceeding, however, 1 per centum per annum on the amount of such bond.[20]

Repeal.

1151. That this act shall take effect immediately, and that all acts and parts of acts inconsistent herewith are hereby repealed.[21]

[19] Act of June 27, 1895, P. L. 399.
[20] Act of June 24, 1895, Sec. 1, P. L. 246.
[21] Act of June 24, 1895, Sec. 2, P. L. 246.

CHAPTER LXXXI.

TUNNEL AND UNDERGROUND PASSAGEWAY COMPANIES.

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1155. Holding Stock and Bonds of Other Companies.
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1159. Protection of Property.
1160. To be Highways.
1161. Limit of Time for Construction of Works.

Incorporation.

1152. [Corporations may be formed for] the construction and maintenance of tunnels or underground passageways.[1]

Management.

1153. Companies incorporated under the provisions of the act to which this is a supplement, for the construction and maintenance of tunnels or underground passageways shall, from the date of the letters-patent creating the same, be governed, managed, and controlled as follows:

Directors.

1154. Clause 1. The directors of such corporation shall have full power and authority to appoint, agree, and contract with such engineers, contractors, laborers, and other persons as they may think necessary, to make and construct and operate such tunnel or underground passageway and buildings, and collect the tolls provided for, and fix their compensation, to purchase real estate necessary therefor, and to sell and improve the same in such manner as they may determine, and to do and transact all other acts, matter, and things as by the by-laws of such corporation may be intrusted to them.

[1] Act of June 25, 1895, Sec. 1, P. L. 310.

Holding Stock and Bonds of Other Companies.

1155. Clause 2. That it shall and may be lawful for any incorporated company of this Commonwealth, or elsewhere, to subscribe and take shares of stock in any corporation incorporated for the purposes named in this act, or to purchase the bonds or stock, or guarantee the payment of said bonds and the interest thereon.

Eminent Domain.

1156. Clause 3. That before the directors of any such corporations shall proceed to construct any such tunnel or underground passageway, it shall be lawful for them to contract with the owner or owners of any land for the purchase of so much thereof as may be necessary for the purpose of such tunnel or underground passageway, or for the right of way through or under the same; but in case they cannot agree with the owner or owners of said land, then proceedings shall be had for the condemnation of said land as provided in Section 41 of the act to which this is a supplement.

Tolls.

1157. Clause 4. When said corporation shall have constructed any tunnel or underground passageway under the authority of this act, either for the passage of persons or traffic, or as a drainage way for the drainage of lands or mines, the property thereof shall be vested in the said corporation, and it shall have power to erect gates and to demand such tolls or compensation as the directors thereof shall, from time to time, determine for permitting the passage of persons, or traffic, or drainage water through such tunnel or tunnels, or underground passageways, and the directors thereof shall also have full power and authority to contract with corporations and individuals for the use thereof, and they shall cause to be put up and kept in some conspicuous place in the station house of the said tunnel, when used for the passage of persons or traffic, an exhibit of the rates of fare or charges fixed by them for the use thereof.

Penalty for Excessive Toll.

1158. Clause 5. If said corporation, or any person employed by it, shall demand or collect any greater tolls or

charges than are prescribed in the exhibit of tolls or charges put up in the station house as aforesaid of a tunnel used for the passage of persons or traffic, he or it shall forfeit for every such offense the sum of ten dollars, to be recovered as debts of a similar nature are recovered, one-half to be paid to the county, and the other half to the persons suing for the same.[2]

Protection of Property.

1159. Clause 6. If any person shall break, mutilate, or destroy any part or parts of said tunnel or underground passageway or other property of the said corporation, or shall willfully obstruct the passageway in or to said tunnel or underground passageway, or any part or parts thereof, each such person shall forfeit and pay to the said corporation the sum of ten dollars for each and every such offense, to be recovered as other debts of a like amount are recoverable; and if any person shall be guilty of carrying any lighted cigar or pipe, or carrying fire into the station houses and buildings of the corporation, or shall discharge any pistol or gun or any fireworks in or near the said tunnel or underground passageway or buildings of the said company, each one so offending shall forfeit and pay the said corporation the sum of ten dollars for every such offense, to be recovered in like manner as aforesaid, but no suit shall be brought for any of the aforesaid offenses unless commenced within thirty days after it shall be known who committed said offenses, and he, she, or they shall remain liable to such action at the suit of the corporation for any of the wrongs enumerated in this clause if the sums herein mentioned be not sufficient to repair or satisfy said damage.

To be Highways.

1160. Clause 7. That such tunnels or underground passageways and the approaches thereto, when used for the passage of persons or traffic, shall be deemed to be and taken as public highways, and subject to the same penalties for obstructions thereof as may now or shall hereafter be enforced for the obstruction of public streets in the municipality in which said approaches may be located.

[2] Act of July 15, 1897, amending Act of June 25, 1897.

Limit of Time for Construction of Works.

1161. Clause 8. If any company incorporated under this act for the purpose of constructing and maintaining a tunnel or underground passageway as aforesaid, shall not proceed to carry on said work within the space of two years from the date of its letters-patent, or shall not, within the space of five years thereafter complete the same, the rights and privileges granted to the said corporation shall revert to the Commonwealth.[3]

[3] Act of June 25, 1895, Sec. 2, P. L. 310.

CHAPTER LXXXII.

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Companies Incorporated Under the Act of March 11, 1857.

Incorporation.

1162. Whenever a special act of the General Assembly shall be passed authorizing the incorporation of a gas or water company within this Commonwealth, the commissioners named in such act, or any five of them, shall have power to open books for receiving subscriptions to the capital stock of said company, at such time or times, and such place or places as they may deem expedient, after having given at least ten days' previous notice in one or more newspapers, published, or having circulation within the county where said company shall be located; at which time and place two or more of the said commissioners shall attend, and permit all persons of lawful age who shall offer to subscribe in such books in their own names, or in the name of any other person who shall duly authorize the same, for any number of shares of stock; and the said books shall be kept open respectively for the purpose aforesaid at least three hours in every juridical day, for the space of five days, or until the said books shall have therein subscribed the whole number of shares authorized by such special act, and if at the expiration of the said five days the books aforesaid shall not have the said number of shares authorized as aforesaid therein subscribed, the attending commissioners may adjourn from

time to time and transfer the books from place to place, until the whole number of shares shall be subscribed, or such number of shares as shall be required before the issue of letters-patent, as hereinafter provided, of which adjournment and transfer the commissioners aforesaid shall give such public notice as the occasion may require; and when the whole number of shares subscribed shall amount to the number authorized or required as aforesaid, the same shall be closed: Provided always, that every person offering to subscribe in such books, in his or her own or any other name, shall at the time of subscribing pay to the attending commissioners any sum not less than one nor more than five dollars (as shall be fixed and determined by said commissioners previously to the opening of the books) for every share so subscribed, out of which shall be defrayed such incidental charges and expenses as may be necessary in taking such subscription, and the remainder shall be paid to the treasurer of the corporation as soon as the same shall be organized and the officers chosen as hereinafter mentioned.[1]

Powers.

1163. When twenty persons or more shall have subscribed 20 per centum on the capital stock provided for by such special Act of Assembly, the said commissioners, or a majority of them may, or when the whole number of shares authorized as aforesaid shall be subscribed, they shall certify under their hands and seals the names of the subscribers, and the number of shares subscribed by each, to the governor of this Commonwealth, whereupon it shall and may be lawful for the governor, by letters-patent under his hand and seal of State, to create and erect the subscribers, and if the subscription be not full at the time, then those also who shall afterwards subscribe to the number aforesaid, into one body politic and corporate in deed and in law, by the name, style, and title designated by such special act; and by such name the said subscribers shall have perpetual succession, and all privileges and franchises incident to a corporation, and shall be capable of taking and holding the capital stock, and the increase and profits thereof, and of enlarging the same by new subscriptions, in such manner and form as they shall

[1] Act of March 11, 1857, Sec. 1, P. L. 77.

think proper, if such enlargement shall be found necessary to fulfill the intent of such special act, and of purchasing, taking, and holding, to them and their successors and assigns, and of selling, transferring and conveying, in fee simple or for any less estate, all such lands, tenements and hereditaments and estate, real and personal, as shall be necessary to them in the prosecution of their works, and of suing and being sued, and of doing all and every other matter and thing which a corporation or body politic may lawfully do.[2]

Officers—By-Laws—Votes.

1164. The commissioners aforesaid, as soon as conveniently may be after the said letters-patent shall be sealed and obtained, shall give notice, in the manner provided for in the first section of this act, of the time and place by them appointed, at which time and place the said subscribers shall proceed to organize such corporation, and shall choose, by a majority of the votes of the subscribers, by ballot, delivered in person or by proxy, duly authorized, one president, five managers, and one treasurer, and such other officers as may be necessary to conduct the business of said company, until the first Monday of May next ensuing, and until their successors shall be chosen, and shall then, or at any other regular meeting, make such by-laws, orders, and regulations, not inconsistent with the Constitution and laws of the United States, and of this Commonwealth, as shall be necessary for the proper management of the affairs of such company: . . . Provided, that no stockholder, whether the original subscriber or assignee, shall be entitled to vote at any election or meeting of said company, unless the whole sum due and payable on the share or shares by him or her held, at the time of such election, shall have been fully paid and discharged.[3]

Stockholders Entitled to One Vote for Every Share.

1165. On and after the passage of this act it shall be lawful for each stockholder of the capital stock of any gas or water company, made subject to the provisions of the act to which this is a supplement, to cast one vote for each share of stock

[2] Act of March 11, 1857, Sec. 2, P. L. 77.

[3] Act of March 11, 1857, Sec. 3, P. L. 77. The omitted portion of this section was repealed by the Act of May 15, 1874, Sec. 1, P. L. 188.

so held by any such stockholder at any and all elections held by any of said companies.[4]

Election of Officers.

1166. Hereafter the stockholders of any company incorporated under the provisions of said act shall choose by a majority of votes a president and five managers; each stockholder shall be entitled to one vote for each share of stock held by him, and the said president and managers shall appoint all other officers and agents necessary to conduct the business of such company.[5]

Officers of Election to Take Oath.

1167. No person acting as judge or officer for holding an election for officers or managers of any gas or water company incorporated as aforesaid shall enter on the duties of his office or appointment until he take and subscribe an oath or affirmation, before a judge, alderman, or justice of the peace, that he will discharge the duties of his office or appointment with fidelity; that he will not receive any vote but such as he verily believes to be legal; and if any such judge or officer shall knowingly and willfully violate his oath or affirmation, he shall be subject to all the penalties imposed by law upon the officers of the general elections of this Commonwealth violating their duties, and shall be proceeded against in like manner and with like effect. And if any election for officers or managers as aforesaid be held without the person holding the same having first taken an oath or affirmation as aforesaid, or be invalid for any other reason, such election shall be set aside in the manner now provided by law, and a new election ordered by the Court of Common Pleas of the proper county, upon the petition of not less than five stockholders, supported by proof satisfactory to said court.[6]

Annual Meetings.

1168. The stockholders of such company shall meet on the first Monday of May, in every year, at such place as shall be fixed by their by-laws, for the purpose of choosing officers

[4] Act of May 15, 1874, Sec. 2, P. L. 188.
[5] Act of May 18, 1878, Sec. 1, P. L. 75.
[6] Act of March 11, 1857, Sec. 4, P. L. 77.

as aforesaid to serve for the ensuing year, or until their successors shall be duly chosen, and at such other times as they shall be summoned by the managers, in such manner and form as shall be prescribed by their by-laws; at which annual or special meetings they shall have full power and authority to make, alter, or repeal, by a majority of votes, all such by-laws, rules, orders, and regulations made as aforesaid, and to do and perform all lawful and necessary corporate acts: Provided, that no by-laws shall be altered or repealed without due notice thereof given, at least one month previous thereto, at a general or special meeting.[7]

Filling of Vacancies—Bonds of Officers.

1169. In case of the death, removal, or resignation of either the president or any of the managers, treasurer, or other officer of such company, the remaining managers may supply the vacancy thus created until the next election. And it shall be lawful for the board of managers to require the treasurer, or any other officer of any such company, to give bond, with one or more sureties, for such an amount as they may deem necessary, conditioned for the faithful performance of the duties of the office to which he may have been elected or appointed [8]

Certificates of Stock.

1170. The president and managers of such company shall procure certificates or evidences of stock, and shall deliver them, signed by the president, countersigned by the treasurer, and sealed with the common seal of the corporation, to each person or party entitled to receive the same, according to the number of shares by him, her, or them respectively held; which certificates or evidences of stock shall be transferable at the pleasure of the holder, in person or by attorney duly authorized, in presence of the president or treasurer, subject, however, to all payments due or to become due thereon. And the assignee or party to whom the same shall have been so transferred shall be a member of said corporation, and have and enjoy all the immunities, privileges, and franchises, and be subject to all the liabilities, conditions, and penalties incident thereto, in the same manner as the original sub-

[7] Act of March 11, 1857, Sec. 5, P. L. 77.
[8] Act of March 11, 1857, Sec. 6, P. L. 77.

scriber or holder would have been: Provided, that no certificate shall be transferred, so long as the holder thereof is indebted to said company, unless the board of managers shall consent thereto.[9]

Payment of Instalments of Capital Stock.

1171. If the stockholder, whether an original subscriber or assignee, after twenty days' notice of the time and place appointed for the payment of any instalment or proportion of the capital stock, shall neglect to pay the same at the place appointed, for the space of thirty days after the time appointed for payment thereof, such stockholder shall, in addition to the instalment so called for, pay at the rate of 1 per centum per month for every delay of such payment; and if the same and additional penalty shall become equal to the sum before paid on account of such share, the same may be forfeited by and to the said company, and may be sold by them at public sale, for such price as may be obtained therefor; or in default of payment of any stockholders of such instalments as aforesaid, for the space of sixty days after the time appointed as aforesaid, the president and managers may, at their election, cause suit to be brought, in the same manner as debts of a like amount are now recoverable, for the recovery of the same, together with the penalties aforesaid.[10]

Powers of Gas Companies.

1172. Where any such company shall be incorporated as a gas company, [it] shall have authority to supply with gas light the borough, town, city, or district where it may be located, and such persons, partnerships, and corporations residing therein or adjacent thereto as may desire the same, at such price as may be agreed upon; and also to make, erect, and maintain therein the necessary buildings, machinery, and apparatus for manufacturing gas from coal or other material, and distributing the same, with the right to enter upon any public street, lane, alley, or highway, for the purpose of laying down pipes, altering, inspecting and repairing the same, doing as little damage to said streets, lanes, alleys, and highways, and impairing the free use thereof as little as possible, and subject to such regulations as the councils

[9] Act of March 11, 1857, Sec. 7, P. L. 77.
[10] Act of March 11, 1857, Sec. 8, P. L. 77.

of said borough, town, city, or district may adopt in regard to grades, or for the protection and convenience of public travel over the same.[11]

Powers of Water Companies.

1173. Where such company shall be incorporated for the supply of water, they shall have power to provide, erect, and maintain all works and machinery necessary or proper for raising and introducing into the town, borough, city, or district where they may be located, a sufficient supply of pure water, and for that purpose may provide, erect, and maintain all proper buildings, cisterns, reservoirs, pipes, and conduits for the reception and conveyance of water; and they are authorized and empowered, by themselves, their agents, engineers, and workmen, and with their tools, carts, wagons, and beasts of draught or burden, to enter upon such lands and inclosures, streets, lanes and alleys, roads, highways and bridges, as may be necessary, to occupy or to obtain materials for the construction of said works, and to occupy, ditch, and lay pipes through the same, and the same, from time to time, to repair, subject to such regulations in regard to streets, roads, lanes, and other highways, as is provided in the foregoing section for gas companies. And if any injury be done to private property, the said company shall make compensation therefor in the manner hereinafter provided.[12]

Power to Borrow Money.

1174. Any of the said companies shall have the power and authority, if they shall deem it necessary for the purpose of their incorporation, to borrow any sum or sums of money, in their corporate capacity, not exceeding in the aggregate one-half of their capital stock paid in at the time of obtaining said loan, and, to secure payment of the same, may make and execute a mortgage or mortgages, pledge or pledges, of the property and effects of their said corporation, or give such other evidences of indebtedness as may be agreed upon; and the managers shall provide for the payment of the interest upon any loan made under this section, out of the receipts for gas or water, as the case may be, before any dividends shall

[11] Act of March 11, 1857, Sec. 9, P. L. 77.
[12] Act of March 11, 1857, Sec. 10, P. L. 77.

be paid to the stockholders: Provided, that no certificate of loan, or other evidence of indebtedness as aforesaid, shall be for a less sum than one hundred dollars.[13]

Power to Borrow Money Extended to Companies Previously Incorporated.

1175. The provisions of the twelfth section of the act to which this is a supplement shall be and are hereby extended to all gas, bridge, and water companies incorporated under any special law of this Commonwealth prior to the passage of the said act.[14]

New Stock to be Issued to Amount of Improvements Made.

1176. The president and managers or board of directors of any of said companies shall be empowered, and they are hereby authorized, whenever they have created or shall erect and construct any new buildings, or any new and material improvements, such as are authorized by their respective charters, to issue certificates of stock to the amount of the cost of such buildings or improvements.[15]

Dividends.

1177. The board of managers of said company shall declare dividends, payable semi-annually, of so much of the net profits of the company as shall appear to them advisable.[16]

Settlement of Damages.

1178. In case the owner or owners of lands and tenements through and upon which such pipes, trunks, aqueducts, reservoirs, and cisterns are laid and constructed, or the owner or owners of lands upon which it may be found necessary to enter for the purpose of digging, taking, and carrying away clay, gravel, or other materials necessary for the purposes contemplated by this act, or the owner or owners of any spring or springs, stream or streams of water, which may be used and appropriated by the company, or any person who may be injured by the diversion of the waters used by said company, cannot agree with the said company upon the

[13] Act of March 11, 1857, Sec. 12, P. L. 77.
[14] Act of March 28, 1871, Sec. 1, P. L. 291.
[15] Act of March 28, 1871, Sec. 2, P. L. 291.
[16] Act of March 11, 1857, Sec. 13, P. L. 77.

damages or compensation to be paid to the said owner or owners, person or persons, it shall and may be lawful for the parties to appoint, or in case the parties cannot agree, then, on application by the party complaining, the Court of Common Pleas of the county in which said company is located shall appoint three disinterested and suitable persons to ascertain and report, on oath or affirmation, to said court, what damages, if any, have or will be done by said company; which report having been returned and confirmed by said court judgment shall be entered thereon, and execution may issue, in case of non-payment, for the sum awarded, with reasonable costs, to be assessed by the court: Provided, that either party may appeal from such award to the court, within twenty days after the same shall have been filed in the office of the prothonotary of said county, in the same manner as appeals are allowed in other cases, whether the said report was made by persons agreed upon by the parties or appointed by the court, upon which appeal such proceedings shall be had as in other cases of damages: Provided, that nothing herein contained shall authorize said company to enter on the land or appropriate the property of any individual, unless the parties agree, without first giving adequate security for any damage they may occasion, to be approved of by one of the judges of the Court of Common Pleas of the county: Provided further, that this act shall not apply to any action for damages now pending in any court of this Commonwealth.[17]

Penalty for Taking Gas or Water Without Authority.

1179. If any person or persons shall open a communication into the water or gas main, or other pipe of said company, without authority from the inspector or other authorized agent of said company, or shall let on the water or gas, after either shall have been stopped by order of said inspector or authorized agent of said company, for repairs or any other cause or purpose, or shall put up any hydrants, pipes, or burners, in addition to those originally put up and inspected, and introduce into them the water or gas, as the case may be, without authority as aforesaid, he, she, or they shall be subject to a penalty of not less than ten, nor more than one hundred dollars, recoverable before any alderman or justice of the

[17] Act of April 24, 1869, Sec. 1, P. L. 93.

peace of the proper county as debts of like amount are by law recoverable, one-half to be paid to the informer, and one-half to the company.[18]

Penalty for Injuring Works of Companies.

1180. If any person shall willfully or maliciously do, or cause to be done, any act or acts whatever, whereby any building, construction, reservoir, or works of said company, or any water or gas pipe, gas post, burner, or reflector, or any matter or thing appertaining to the same, shall be stopped or obstructed, injured, contaminated or destroyed, the person or persons so offending shall be considered guilty of a misdemeanor, and may therefor be indicted in the Court of Quarter Sessions of the proper county, and, on conviction thereof, shall be punished by fine, not exceeding five hundred dollars, or be imprisoned, not exceeding one year, or both, at the discretion of the court: Provided, that such criminal prosecution shall not in any way impair the right of said company to a full compensation in damages by civil suit.[19]

Municipal Corporations may Purchase Works.

1181. It shall and may be lawful, at any time after twenty years from the introduction of water or gas, as the case may be, into any place as aforesaid, for the town, borough, city, or district into which the said company shall be located, to become the owner of said works, and the property of said company, by paying therefor the net cost of erecting and maintaining the same, with interest thereon at the rate of 10 per cent. per annum.[20]

Charters to be Subject to Repeal.

1182. Every charter of incorporation which shall be granted under the provisions of this act shall be subject to the power of the legislature to alter, revoke, or annul the same whenever, in their opinion, it may be injurious to the citizens of the Commonwealth, in such manner, however, that no injustice shall be done to the corporators.[21]

[18] Act of March 11, 1857, Sec. 14, P. L. 77.
[19] Act of March 11, 1857, Sec. 15, P. L. 77.
[20] Act of March 11, 1857, Sec. 16, P. L. 77.
[21] Act of March 11, 1857, Sec. 17, P. L. 77.

Gas and Water Companies Incorporated Under the Act of April 29, 1874, and Its Supplements.

Powers of Water, Light, Heat, and Fuel Companies.

1183. Companies incorporated under the provisions of this statute for the supply of water to the public, or for the manufacture and supply of light, heat, and fuel, or any of them, by any process of manufacture, shall, unless otherwise provided by this act, from the date of the letters-patent creating the same, have the powers and be managed, governed, and controlled as hereinafter provided.[22]

Boundaries of Gas and Water Companies.

1184. The precise boundaries of the district in which a proposed gas or water company is to operate need not be set forth in the application. All that is necessary to set forth is the place or places where the business of the company is to be transacted. After the charter has been granted the district or territory covered by it is to be determined by the actual and legal extent of the operations of the company in supplying gas or water.[23]

Under the Act of June 2, 1887, relating to heat, light, and fuel companies, the only limitation as to territory that need be set forth in the application is that such territory shall not cover more than a single county, and it cannot include any municipal sub-division of a county that has been already covered by a charter to supply, heat, light, and fuel, exclusive in its character.[24]

[22] Act of June 2, 1887, Sec. 1, P. L. 310.

Where two gas companies are applying for a charter about the same time, that which advertises first is entitled to have its application granted: Shamokin Coal Gas Co. Opinion of the Attorney-General of August 19, 1874.

Where a municipality has not established gas works, it cannot by ordinance prevent a private gas company, chartered under the Act of April 29, 1874, from occupying the streets: Reading *v.* Consumers Gas Co., 2 Del. Co. Rep. 437 (1884).

[23] Lancaster Gas Light & Fuel Co. *v.* Gas Light Co. of Lancaster, 17 Pa. C. C. R. 453 (1896). See opinion of the Attorney-General of March 29, 1882.

[24] Heat, Light, and Fuel Companies, 17 Pa. C. C. R. 113 (1895).

A gas company may secure electric light franchises by amendment of its charter under the Act of June 2, 1887, but in such a case the charter or the amendment must specifically define the territory to be supplied.[25] The Act of 1874, relating to gas companies, did not apply to lighting by electricity.[26]

In applications to the Department of State for charters for water companies, disputed questions of fact as to what is adjacent territory will not be decided by the department, but will be remanded to the courts for adjudication.[27]

Capital Stock of Gas and Water Companies.

1185. Corporations of the character provided for herein shall be entitled to have a capital stock not exceeding five million dollars.[28]

Stock of Gas and Water Companies—Power to Hold Stock of Other Companies.

1186. The stock of every corporation created under the provisions of this statute shall be deemed personal property; and no shares shall be transferable until all previous calls thereon shall have been fully paid in, or shall have been declared forfeited for the non-payment of calls thereon. No note or obligation given by a stockholder, whether secured by pledge or otherwise, shall be considered as a payment of any part of the capital stock. It shall and may be lawful for any company, organized under the provisions of this act, either for the purpose of carrying on any manufacturing business or for supply of water or manufacturing and supplying light, of this Commonwealth or elsewhere, to subscribe for, take, purchase, hold, and dispose of the bonds or stock of any company of the same character incor-

[25] Conshohocken Gas Light Co., 5 Pa. C. C. R. 585 (1888).

[26] Scranton Light & Heat Co.'s Appeal, 122 Pa. 154 (1888).

[27] Union Water Co., 12 Pa. C. C. R. 61 (1892); Granite Water Co., 12 Pa. C. C. R. 63 (1892); Home Electric Co., 11 Pa. C. C. R. 179 (1892); Bryn Mawr Water Co., 10 Pa. C. C. R. 670 (1891); Levis Water Co., 11 Pa. C. C. R. 178 (1892); Seneca Bridge Co., 11 Pa. C. C. R. 337 (1892); Fayette Fuel Gas Co., 11 Pa. C. C. R. 488 (1892).

[28] Act of June 2, 1887, Sec. 4, P. L. 313. The capital stock of water companies cannot exceed two million dollars: Act of May 9, 1889, P. L. 181.

porated under the provisions of this act or its supplements, or guarantee the payment of said bonds and the interest thereon, or either principal or interest, or to enter into contracts for the use or lease of the corporate property, real, personal, or mixed of such company, upon such terms as may be agreed upon with the company or companies owning the same, and to run, use, and operate such property in accordance with such contract or lease.[29]

Courts May Hear and Determine Complaints of Impurity of Gas and Water.

1187. The provisions of the third clause of Section 34 of the act approved April 29, 1874, entitled "An act to provide for the incorporation and regulation of certain corporations," which reads as follows: "Provided, that the said corporations shall at all times furnish pure gas and water, and any citizen using the same may make complaint of impurity or deficiency in quantity, or both, to the Court of Common Pleas of the proper county, by bill filed, and, after hearing the parties touching the same, the said court shall have power to make such order in the premises as may seem just and equitable, and may dismiss the complaints or compel the corporation to correct the evil complained of," be and the same is hereby extended and made applicable to all gas and water companies incorporated under any of the laws of this Commonwealth.[30]

Practice in Such Cases.

1188. All proceedings authorized by said proviso shall be in accordance with the rules of equity practice now existing: Provided, that all lawful fees and costs accruing in such proceeding shall be taxed and allowed as provided by the equity fee bill in the respective court, and paid by the unsuccessful party.[31]

Appeal.

1189. Either party may appeal to the Supreme Court, as in cases in equity.[32]

[29] Act of June 26, 1895, P. L. 369, amending Act of May 25, 1887, which amended Act of April 29, 1874, Sec. 12, P. L. 73.

[30] Act of June 10, 1881, Sec. 1, P. L. 112.

[31] Act of June 10, 1881, Sec. 2, P. L. 112.

[32] Act of June 10, 1881, Sec. 3, P. L. 112.

Penalty for Taking Gas or Water Without Authority.

1190. If any person or persons shall open a communication into the water or gas main, or other pipe of said company, without authority from the inspector or other authorized agent of said company, or shall let on the water or gas, after either shall have been stopped by order of said inspector or authorized agent of said company for repairs or any other cause or purpose, or shall put up any hydrants, pipes, or burners in addition to those originally put up and inspected, and introduce into them water and gas, as the case may be, without authority as aforesaid, he, she, or they shall be subject to a penalty of not less than ten, nor more than one hundred dollars, recoverable before any alderman or justice of the peace of the proper county as debts of like amount are by law recoverable, one-half to be paid to the informer, and one-half to the company.[33]

Penalty for Injuring Works of Companies.

1191. If any person shall willfully or maliciously do, or cause to be done, any act or acts whatever, whereby any building, construction, reservoir, or works of said company, or any water or gas pipe, gas post, burner, or reflector, or any matter or thing appertaining to the same shall be stopped or obstructed, injured, contaminated, or destroyed, the person or persons so offending shall be considered guilty of a misdemeanor, and may therefor be indicted in the Court of Quarter Sessions of the proper county, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars, or be imprisoned not exceeding one year, or both, at the discretion of the court: Provided, that such criminal prosecution shall not in any way impair the right of said company to a full compensation in damages by civil suit.[34]

Municipal Corporations May Purchase Works.

1192. It shall be lawful, at any time after twenty years from the introduction of water or gas, as the case may be, into any place as aforesaid, for the town, borough, city, or district in which the said company shall be located, to become

[33] Act of April 29, 1874, Sec. 34, P. L. 73.
[34] Act of April 29, 1874, Sec. 34, P. L. 73.

the owners of said works, and the property of said company, by paying therefor the net cost of erecting and maintaining the same, with interest thereon at the rate of 10 per centum per annum, deducting from said interest all dividends theretofore declared: Provided, that nothing in this section contained shall authorize a company incorporated under the provisions of this act to construct gas or water works within the limits of any municipality, when gas or water works shall have been constructed by said municipality, without the lawful consent of the corporate authorities thereof: And provided further, that the Court of Common Pleas of the proper county shall have jurisdiction and power, upon the bill or petition of any citizen using the gas or water of any of said companies, to hear, inquire, and determine as to the charges thereof for gas or water so furnished, and to decree that the said bill be dismissed, or that the charges shall be decreased as to the said court may seem just and equitable, and to enforce obedience to their decrees by the usual process.[35]

Purchase of Property and Franchises of Water and Light Companies.

1193. The councils of any city of the third class are hereby authorized and empowered to purchase, for such price as may be agreed upon by the councils of the city and a majority of the stockholders of the company, all the real, personal, and mixed estate of any water, gas, or electric light company or companies in such city, or adjacent thereto, and thereupon the said city shall possess and exercise all the rights, powers, privileges, and franchises by law belonging or pertaining to such company or companies, and may take and appropriate any stream or streams of water, spring or springs, lands, tenements, hereditaments, property, and materials, near or accessible to such city, which may be necessary for the erection and maintenance of water, gas, or electric light works, and for the supplying of said city with water or light, and may enter into and upon any lands, inclosures, streets, or highways to procure materials for the construction of said works, doing as little damage as possible to property, and making compensation to the owner or owners of all species of property taken, appropriated or injured by them for the purposes aforesaid, as herein provided; but the powers

[35] Act of April 29, 1874, Sec. 34, P. L. 73.

granted by this section shall not be exercised by councils until authority so to do shall have been given them by a majority of the voters of such city, at a special election held for that purpose, of which election the mayor shall give notice as provided for municipal elections.[36]

Power of Gas and Water Companies to Borrow Money.

1194. It shall be lawful for any gas company or water company, incorporated under the provisions of the Act of the General Assembly of this Commonwealth, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, to borrow any sums of money, not exceeding in the aggregate one-half of the capital stock of such company paid in, at a rate of interest not exceeding amounts now allowed by law, and issue bonds therefor, with coupons or interest warrants attached, and secure the payment of such bonds and interest warrants by a mortgage to a trustee or trustees of all its real and personal property, rights, privileges, and franchises.[37]

Heat, Light, and Fuel Companies—Special Provisions.

Powers and Duties.

1195. Where any such company shall be incorporated for the supply of heat, light, and fuel, or any of them, by any process of manufacture, it shall have authority to supply such heat, light, and fuel, or any of them, to the territory named in its articles of association (which shall never cover more than a single county), and to such persons, partnerships, and corporations residing therein, or adjacent thereto, as may desire the same, at such prices as may be agreed upon, and shall have the power of eminent domain to appropriate property, so far as may be necessary to enable it to acquire that which is necessary for its plant (whether the same be in the county named in its articles of association, or elsewhere), and for its lines of distribution; and the power also to make, erect, and maintain the necessary building, machinery, and apparatus for producing heat, light, and fuel, or any of them, and to distribute the same; with the right to enter upon any

[36] Act of May 23, 1889, Sec. 1, P. L. 277. See Strawbridge *v.* Philadelphia, 2 Penny. 419; Millvale Borough, 162 Pa. 374 (1894).

[37] Act of March 24, 1877, Sec. 1, P. L. 39.

public street, lane, alley, or highway, for such purpose, to alter, inspect, and repair its system of distribution, doing as little damage to said streets, lanes, alleys, and highways, and impairing the free use thereof as little as practicable, and subject to such regulations as the councils of any borough or city, whose highways may be occupied, shall adopt in regard to grades, or for the protection and convenience of public travel over the same: Provided, that no company, which may now or hereafter be incorporated under the provisions of this act, shall enter upon any street, in any city or borough of this Commonwealth, until after the consent, to such entry, of the councils of the city or borough, in which such street may be located, shall have been obtained. And the said right of eminent domain shall be exercised in the mode prescribed and according to the provisions of the forty-first section of the act, with this proviso, however, that where any such company shall use its system of distribution for the conveyance of gas for any of the purposes aforesaid at a greater pressure than four ounces per square inch of pressure, or where the gas manufactured shall contain more than 10 per cent. of carbonic oxide, such system of distribution shall be provided with suitable appliances for preventing, or taking up any leakage, so that danger to life, property, and vegetation may be avoided.[38]

When Charter Will Not be Granted for Light, Heat, and Fuel Company.

1196. A charter will be refused where the application states the purpose as follows: "Manufacturing gas for illuminating, heating, and fuel, and their bi-products, and erecting, purchasing, leasing, improving, and operating works for the manufacture of the same; of manufacturing, leasing, buying, and selling all goods, materials, apparatus, and appliances,

[38] Act of June 2, 1887, Sec. 2, P. L. 310, amending the Act of April 29, 1874, Sec. 34. A gas company is a *quasi* public corporation: Coatesville *v.* Chester Co., 97 Pa. 476 (1881); Schuylkill Co. *v.* Gas Co., 148 Pa. 162 (1892); McNeal *v.* West Pittsburgh Co., 4 W. N. C. 504 (1878).

The Act of April 29, 1874, Sec. 34, relating to the incorporation of gas companies, does not apply to a corporation organized for the purpose of supplying natural gas to consumers: Emerson *v.* Com., 108 Pa. 111 (1884).

with the right to acquire and hold patent rights for inventions and designs relating thereto, and receiving and granting licenses thereunder." Such a statement of purpose is dual in character, prolix in phraseology, and of doubtful construction.[39]

There is no provision in the acts for the incorporation of a company simply for the "supply of gas." No matter for what purpose the gas may be used, it must be the result of a manufacturing process, and unless the fact that the company proposes to manufacture gas appears affirmatively in the certificate of incorporation, the charter cannot be granted.[40]

Exclusive Franchises of Gas Companies.

1197. The right to have and enjoy the franchise and privileges of such corporation for the manufacture of gas, for light only, shall be an exclusive one, within the district or locality covered by its charter; and no other company shall be incorporated for the manufacture of gas to supply light only to the public until said corporation shall have, from its earnings, realized and divided among its stockholders, during five years, a dividend equal to 8 per centum per annum upon its capital stock: Provided, that the said corporation shall at all times furnish pure gas and water, and any citizen using the same may make complaint of impurity or deficiency in quantity, or both, to the Court of Common Pleas of the proper county, by bill filed, and after hearing the parties touching the same, the said court shall have power to make such order in the premises as may seem just and equitable, and may dismiss the complaints or compel the corporation to correct the evil complained of.[41]

A gas company chartered under the Act of April 29, 1874, and prior to the passage of the Act of June 2, 1887, has exclusive privileges,[42] and the same rule applied prior to the

[39] McClurg Gas Construction Co., 16 Pa. C. C. R. 505 (1895).

[40] City Gas Light Co. of Philadelphia, 18 Pa. C. C. R. 136 (1896).

[41] Act of June 2, 1887, Sec. 3, P. L. 312, amending the Act of April 29, 1874, Sec. 34, P. L. 93.

[42] Lansdowne Gas Co., 14 Pa. C. C. R. 518 (1894). Opinion of the Attorney-General of July 15, 1878.

Act of 1895 to a company which was chartered in 1871, but which had accepted the provision of the Act of 1874.[43]

Under the Act of June 2, 1887, two different classes of gas companies may be incorporated. One for the manufacture of gas for light only, whose franchises is exclusive, and the other for the manufacture of gas for other purposes, whose franchise is not exclusive. A company of the latter class has no standing to protest on the ground of exclusive privilege, against any company making application for a charter. The words "for light only" are descriptive of the franchise and the corporation to which class the exclusive privilege is solely confined.[44]

[43] Suburban Gas Co., 14 Pa. C. C. R. 519 (1894); Com. *v.* Pittsburgh Illuminating Co., 180 Pa. 578 (1897).

[44] City Gas Light Company of Philadelphia, 18 Pa. C. C. R. 136 (1896). The secretary of the Commonwealth, in construing the Act of June 2, 1887, said: "Prior to the Act of June 2, 1887, all companies incorporated under the Act of April 29, 1874, for the manufacture and supply of gas, acquired exclusive franchises, and the Commonwealth was expressly prohibited from granting another charter for the same purpose within the same territory until the corporation had earned and declared dividends equal to eight per centum per annum upon its capital stsock for five years. During the period of time between the passage of the Act of April 29, 1874, and that of June 2, 1887, there never was any question as to the existence or extent of the exclusive franchise of gas companies. They were incorporated for the manufacture and supply of gas, and their franchise, for that purpose, was regarded by the courts and the department as being an exclusive one, until certain conditions were realized. This was the state of the law until the passage of the Act of June 2, 1887, which seems to draw a distinction between gas companies, and to create two different classes of these corporations, one for the manufacture of gas for light only, whose franchise is declared to be exclusive, and another for the manufacture of gas for other purposes, whose franchise is not exclusive. The reading of the act leaves no doubt that this was the manifest purpose and intention of the legislature. The 34th section of the Act of April 29, 1874, as amended by the Act of June 2, 1887, reads as follows: 'The right to have and enjoy the franchises and privileges of such corporation for the manufacture of gas, for light only, shall be an exclusive one within the district or territory covered by its charter, . . and no other company shall be incorporated for the manufacture of gas to supply light only to the public,' etc. It is under this clause of the act that the present contest arises. Do the words 'for light only' refer to the franchise, as descriptive only of the limitation upon the part which

A prior franchise is only exclusive as against a subsequent application when the latter is identical with the former. Thus the fact of the existence of a corporation chartered to supply a particular district with illuminating gas will not prevent the subsequent incorporation of a manufacturing company under Clause 18, Section 2, of the Act of April 29, 1874, for the purpose of "the manufacture and sale of calcium carbide and its products." The franchises in such cases were considered to be, not only not identical, but not even of a similar character.[45]

shall be exclusive, or do they designate the character of the corporation itself whose entire franchise shall be exclusive? If there could be any doubt about the proper meaning of the words as used in the first part of the sentence, is that doubt not cleared away by their unquestioned meaning when used in the latter part, where it is expressly stated that 'no other company shall be incorporated for the manufacture of gas to supply light only,' etc.? Is it not made perfectly plain by this expression that the exclusive franchise is to be confined solely to companies incorporated for the manufacture of gas for light only, and that the words 'for light only' are descriptive of the corporation as well as the franchise? The prohibition against granting other charters is limited to those for light only, and this limitation, by the very words used to enforce it, designates as well the character of the franchise that is conferred upon a corporation seeking a monopoly. When the law-making body said 'no other company shall be incorporated for the purpose of manufacturing gas to supply light only,' it is to be presumed that they understood the grammatical meaning of the words used, and if this is admitted, there can be no doubt that it was their intention to confine this exclusive privilege solely to those corporations chartered for light only, and thus to divide gas companies into two classes." See also Scranton Electric Light & Heat Co.'s Ap., 122 Pa. 154 (1888); Warren Gas Light Co. *v.* Pennsylvania Gas Light Co., 161 Pa. 510 (1894).

[45] Lebanon Gas Co. *v.* Lebanon Fuel Illuminating Power Co., 18 Pa. C. C. R. 223 (1896). In this case the secretary of the Commonwealth said: "In answer to the allegation contained in the protest that the only product, or at least the principal commercial product, of calcium carbide, is illuminating gas, it is sufficient to say that this department is not clothed with authority to pass judgment upon disputed questions of fact, nor to determine from oral or other evidence what a corporation intends or can do under its charter. The Lebanon Fuel, Illuminating & Power Company, under the application now on file, will get nothing more than a manufacturing franchise, and if, after incorporation, it does any act which infringes the exclusive privileges of the Lebanon Company, the courts are open for such redress as may be deemed proper. This department

"Supplying gas light" and "supplying heat by means of gas" are not identical purposes, and a corporation for the latter purpose will be chartered, although there is in existence a corporation chartered for the former purpose and operating in the same district.[46]

Exclusive Privileges Taken from Certain Companies.

1198. Whereas, the true policy of the grant of exclusive rights to gas companies is the encouragement and establishment of such companies for the supply of gas where no such

has no authority to look beyond the regularity of the papers, and if there is no conflict apparent in the application, I have no discretion to refuse the charter. The applying corporation asks for a franchise entirely different from that enjoyed by the protesting company, and there being no conflict between them, so far as the papers show, the protest is overruled, and the charter is directed to be issued." See also Dauphin Light & Heat Co., 1 Pa. C. C. R. 480 (1886).

[46] Keystone Fuel Gas Co., 12 Pa. C. C. R. 302 (1892). In this case HARRITY, secretary of the Commonwealth, said: "Under Clause 11, a company could either be chartered for the purpose of 'supplying gas light,' or 'supplying heat by means of gas,' to the public, and these purposes are neither identical, nor does the one in any way grow out of the other. The Williamsport Gas Co. might have been chartered under the Act of 1874, for the purpose of supplying gas light to the public in Williamsport, but could not have prevented the chartering of another company to supply fuel gas to said city. The purpose of the Williamsport Gas Co. is a definite one, and the acceptance by it of the Act of 1874 cannot enlarge it. If it could, such acceptance might go to the extent of authorizing said company to carry on the other pursuits which the said act mentions. As we understand it, however, such acceptance gives said company only the exclusive right to furnish gas light in said district, and confers upon it all the privileges, immunities, and franchises, as if it had been originally incorporated under the act for that purpose. Neither are the purposes identical or in conflict. While it is true that illuminating gas is used as fuel, that fact cannot change its composition, which requires it to be rich in carbon, in order that it may afford high incandescence, nor can it make it properly a fuel gas, which contains little or no carbon, and produces the maximum of heat with the smallest amount of light. Hence, it would seem that these purposes could not be confounded. The flame which would produce the greatest heat would give the poorest light, and the purpose of the Keystone Fuel Gas Company being to furnish heat by means of manufactured gas cannot harm the Williamsport Gas Company, which still has an exclusive right as we understand it, to supply Williamsport with gas light."

supply was previously furnished, and the real consideration for such exclusive rights is the new public service thus secured.

And whereas, many corporations long and profitably established have accepted the provisions of the said Act of 1874, for the purpose of securing a monopoly of a business, the conditions of which invited competition, and of forestalling the incorporation of companies about to be organized.

And whereas, it is injurious to the citizens of the Commonwealth that the exclusive rights and privileges of gas companies which have accepted the provisions of said Act of 1874, should longer continue.

Now therefore, in recognition of the limitation of Article I, Section 17, and pursuant to the provisions of Article XVI, Section 10, of the Constitution,

Section 1. Be it enacted, etc., that all exclusive rights, franchises, and privileges of each and every gas company which was in existence prior to April 29, 1874, and which has since accepted the provisions of the act entitled "An act to provide for the incorporation and regulation of certain corporations," passed April 29, 1874, or of the said act and its supplements, pursuant to the provisions of the twenty-sixth section of said act, as originally enacted, or as since amended, so far as said exclusive rights, franchises, and privileges are conferred by the provisions of said act, or of any amendment thereof, or supplement thereto, are hereby revoked and annulled, anything in the twenty-fifth section, or in any other provision of said act, or of any amendment thereof or supplement thereto, to the contrary notwithstanding.[47]

The right to have and enjoy the franchises and privileges of such corporation for the manufacture of gas, for light only, shall be an exclusive one, within the district or locality covered by its charter; and no other company shall be incorporated for the manufacture of gas to supply light only to the public until the said corporation shall have, from its earnings, realized and divided among its stockholders, during five years, a dividend equal to 8 per centum per annum upon its capital stock: Provided, that said corporation shall at all times furnish pure gas and water, and any citizen using the same may make complaint of impurity or deficiency in

[47] Act of June 24, 1895, P. L. 266.

quantity, or both, to the Court of Common Pleas of the proper county, by bill filed, and after hearing the parties touching the same, the said court shall have power to make such order in the premises as may seem just and equitable, and may dismiss the complaints, or compel the corporation to correct the evil complained of: And provided, that the right to have and enjoy the franchises and privileges of such corporation for the manufacture of gas for light only, shall not be an exclusive one in any case of a corporation existing prior to April 29, 1874, which has accepted or hereafter may accept the provisions of the Act of April 29, 1874, entitled "An act to provide for the incorporation and regulation of certain corporations," or of said act and its supplements.[48]

It was the purpose of the Act of June 24, 1895, No. 179 and 180, to repeal the exclusive franchises which gas companies existing prior to the passage of the Act of April 29, 1874, acquired by reason of their acceptance of the act. The acts did not have the effect to repeal the exclusive franchises which the companies had acquired by their original charters granted prior to the passage of the Act of 1874.[49]

The title, preamble, and the Act of June 24, 1895, P. L. 266, itself discloses the plain legislative intention to revoke and annul only such exclusive franchises as are acquired by the acceptance of the Act of April 29, 1874, and not such exclusive franchises as are acquired by an original charter under that act.[50]

Interference with Property of Gas Company.

1199. That whoever, except the authorized agent or employee for the purpose of the owner, manufacturer, or operator thereof, maliciously opens, closes, or in any manner or to any extent adjusts or interferes with any valve, regulator, gauge, gate, disc, curbcock, stopcock, meter, or other regulating, operating, or measuring device or appliance in or

[48] Act of June 24, 1895, P. L. 267, amending Act of June 2, 1887, Sec. 3.

[49] Williamsport Gas Co. *v.* Gas Company of Williamsport, 17 Pa. C. C. R. 456 (1896).

[50] South Side Gas Co. *v.* Southern Illuminating Co., 18 Pa. C. C. R. 529 (1896).

attached to the wells, tanks, conduits, pipe lines, mains, service pipes, house pipes, display pipes, or other distributing pipes of any gas company, manufacturer, or furnisher of gas, with intent to cause the escape of any gas, or to injure or destroy any of such property, or maliciously enlarges or alters any mixer, furnished or approved by any gas company, manufacturer, or furnisher of gas, to or for a consumer of its, his, or their gas, or maliciously removes from its connection any mixer so furnished or approved of, or puts on any mixer without express permission first obtained, or consumes for fuel or light the gas of any gas company, manufacturer, or furnisher of gas, or taps, severs, or opens any main or pipe used or intended for the transmission of gas, or connects with such main or pipe any other main or pipe, shall be deemed guilty of a misdemeanor, and upon conviction thereof be sentenced to pay a fine not exceeding three hundred dollars, or undergo an imprisonment not exceeding three months, or both, or either, at the discretion of the court. The word "gas" in this act shall include and mean natural and artificial gas used for heating and illuminating purposes.[51]

Water Companies—Special Provisions.

Incorporation.

1200. [Corporations may be formed for] the supply of water to the public, or the supply, storage or transportation of water and water power for commercial and manufacturing purposes.[52]

Location.

1201. An application for a charter for a water company must affirmatively show where the company is located, and into what town, borough, city or district it proposes to introduce water. An averment in the application that the water is to be taken from a particular creek designated by

[51] Act of June 26, 1895, P. L. 319.

[52] Act of May 16, 1889, Sec. 1, P. L. 226. A water company is a public corporation, and buildings necessary for the enjoyment of its franchises are not subject to mechanics' liens: Guest *v.* Lower Merion Water Co., 28 W. N. C. 285 (1891); Foster *v.* Fowler, 60 Pa. 27 (1869).

name, does not sufficiently locate the company within the meaning of the Act of April 29, 1874.[53]

An application for a charter for a water company cannot cover more than a single district or municipality.[54]

A charter for a water company will be granted by the department notwithstanding protest filed to the effect that the proposed company intends to build dams in a river and destroy the fish of the stream. The charter will not give power to the company either to build dams or to destroy fish, and if it should attempt to exercise such power there is ample authority in the courts to prevent it.[55]

An application for a charter which states that the purpose of the company is "the supply of water to the public, or the supply, storage, or transportation of water and water power for commercial and manufacturing purposes," violates the rule that an application must express a single purpose.[56]

Exclusive Privileges.

1202. Where a water company has been granted the exclusive right to supply a certain district, a charter will not be granted to another company to supply the same district, until after the first company has ceased to exist.[57]

Where a water company has been organized under the

[53] Perkiomen Water Storage Co., 13 Pa. C. C. R. 124 (1893).

[54] Sowego Water & Power Co., 16 Pa. C. C. R. 179 (1895) ; Monongahela Water Co., 9 Pa. C. C. R. 57 (1890).

[55] Sowego Water & Power Co., 16 Pa. C. C. R. 179 (1895).

[56] Sowego Water & Power Co., 16 Pa. C. C. R. 179 (1895).

[57] Bryn Mawr Water Co., 10 Pa. C. C. R. 670 (1891) ; Levis Water Co., 11 Pa. C. C. R. 178 (1892) ; Exclusive Right of Corporations, 2 Chester Co. Rep. 423 (1877) ; Freeport Water Works Co. *v.* Prager, 3 Pa. C. C. R. 371 (1887); 129 Pa. 605 (1889); Lehigh Water Co.'s Ap., 102 Pa. 515 (1883) ; Luzerne Water Co. *v.* Toby's Creek Water Co., 4 Del. Co. Rep. 490 (1891).

The Act of May 23, 1874, P. L. 230, providing for the organization and government of cities of the third class, and authorizing such cities to erect and maintain water works, is not repugnant to, and does not repeal, the Act of April 29, 1874, P. L. 73, relating to the organization of water companies for the purpose of supplying boroughs and cities with water: White *v.* Meadville, 177 Pa. 643 (1896).

Act of April 29, 1874, P. L. 73, to supply a borough with water, and the borough has entered into a contract with the company and permitted it to lay its pipes, the borough cannot subsequently erect and maintain water works to supply its citizens with water, as provided by the Act of May 23, 1874, P. L. 261.[58]

In some cases water works constructed by a private corporation will be considered as having been constructed by a municipality within the meaning of the Act of April 29, 1874. Thus where a borough is authorized by a special act to subscribe to the stock of a corporation organized to supply the borough with water, with a right to appoint some of the managers, but without the right to participate in the election of the other managers, the works of such a company will be considered the works of the municipality within the meaning of the act.[59]

Although a corporation has been chartered to supply water to a township and adjacent territory, a charter will not be refused to another company to supply water to a village three miles from the township line.[60]

Where it appears that a water company was chartered and acquired the exclusive right to supply a particular district the Department of State cannot decide whether such company did or did not forfeit its franchises, or that the same ever lapsed or were forfeited. Until it is shown that the exclusive privilege of the first company no longer exists, another company cannot be chartered for the same district.[61]

Where a water company incorporated under the Act of April 29, 1874, P. L. 73, fails to carry on its work for two years, as provided by the Act of April 17, 1876, P. L. 47, its rights and privileges revert to the Commonwealth without

[58] Wilson *v.* Rochester Borough, 180 Pa. 509 (1897); Metzger *v.* Beaver Falls, 178 Pa. 1 (1896); White *v.* Meadville, 177 Pa. 643 (1896).

[59] Carlisle Gas & Water Co. *v.* South Side Water Co., 15 Pa. C. C. R.

[60] Granite Water Co., 12 Pa. C. C. R. 63 (1892).

[61] Monongahela Water Co. *v.* South Side Water Co., 15 Pa. C. C. R. 603 (1895).

any judicial action or further legislation, and the Commonwealth can then grant a charter to another company to be formed for the same purpose.[62]

The exclusive franchise conferred upon water companies by the Act of April 29, 1874, is confined to the particular municipality or municipal division mentioned in the charter, and if the corporation extends its operations into adjacent districts it does so at its peril, and it cannot prevent the subsequent incorporation of other companies to supply water in such adjacent districts.[63]

A water company was incorporated to supply water "in the city of New Castle, and in the district adjacent thereto." It was held that such company had no exclusive franchise to supply water "in the districts adjacent thereto."[64]

In ascertaining whether a water company has realized and divided among its stockholders a dividend equal to 8 per centum per annum for five years upon its capital stock under the exclusive franchise clause of the Act of April 29, 1874, a stock dividend must be regarded as a dividend precisely the same as those declared in cash.[65]

[62] Commonwealth, *ex rel.* Attorney-General *v.* Lykens Water Co., 110 Pa. 391 (1885).

[63] City of New Castle Water Co. *v.* West New Castle Water Co., 18 Pa. C. C. R. 498 (1896).

[64] City of New Castle Water Co. *v.* West New Castle Water Co., 18 Pa. C. C. R. 498 (1896). In this case the secretary of the Commonwealth said: "To say that the franchise of the City of New Castle Water Company is exclusive as to the 'adjacent districts,' would be to ignore another well settled rule of the department, that where there is any doubt as to the authority of the protesting company to occupy the territory claimed that doubt must be resolved in favor of the applicant, the charter issued, and the dispute remanded to the courts for determination. This practice is not only in harmony with the corporation law of the State, but is founded upon sound public policy. If the protesting company has such exclusive franchise as is set up in this case, the courts of equity have ample power to prevent its invasion by the applying company, but unless the charter asked for be granted, there is no way by which the applicants can have their rights passed upon by the only tribunal having authority to decide the questions involved."

[65] Philipsburg Water Co. *v.* Citizens' Water Co. of Philipsburg, 18 Pa.

The legislature may confer upon a water company the exclusive right to supply a borough with water, and if such company's property and franchises are sold by the sheriff, and the purchaser organizes a new company, which accepts the new Constitution, such acceptance does not deprive the new company of the exclusive privileges conferred upon the old company.[66]

Waiver of an exclusive right by a water company incorporated to supply a particular district with water does not authorize the incorporation of a second company to supply the same district.[67]

Powers and Duties.

1203. Where such company shall be incorporated for the supply of water to the public, or for storing and transportation or supply of water and water power for commercial and manufacturing purposes, they shall have power to provide, erect, and maintain all works and machinery necessary or proper for raising and introducing into the town, borough, city, or district where they may be located a sufficient supply of pure water, or water and water power as aforesaid, and for that purpose may provide, erect, and maintain all proper buildings, cisterns, reservoirs, pipes, and conduits for the reception and conveyance of water, or water power, and it shall have power to appropriate so much of the water from the rivers, creeks, canal water-rights and easements, within or without the limits of the city, borough, or place in which said company may by its charter be located, as may be necessary for its purposes, and all damage done thereby shall be ascertained, recovered, and paid as provided for in the forty-first section of the act to which this is a supplement, and it is further authorized and empowered by itself, its agents, engineers, and workmen, and with its and their tools, carts, wagons, beasts of draught or burden, to enter upon such lands and inclosures, streets, lanes, alleys, roads, and highways and bridges as may be necessary to occupy or to

C. C. R. 625 (1897). See Wilkes-Barre Electric Light Co. *v.* Wilkes-Barre Light, Heat & Motor Co., 4 Kulp, 47 (1886).

[66] Gas Co. *v.* Downingtown, 175 Pa. 341 (1896).

[67] Opinion of the Attorney-General of February 3, 1877.

obtain materials for the construction of said works, and to occupy, ditch, and lay pipes through the same, and the same from time to time to repair, subject to such regulations in regard to streets, roads, lanes, and other highways, and impairing the free use thereof as little as possible, and subject to such regulations as the councils of said borough, town, city, or district may adopt in regard to grades or for the protection and convenience of public travel over the same, and if any injury be done to private property the said company shall make compensation therefor in the manner provided for in the forty-first section of this act: Provided, that this act shall not apply to private spring or private water supplies.[68]

A water company incorporated under the Act of April 29, 1874, may take the works and improvements of a private water company, under the right of eminent domain, but cannot take or condemn springs or streams.[69]

The measure of damages is the difference in the value of the whole property before and after the taking of the stream.[70]

Duty to Supply Pure Water.

1204. A water company incorporated under the Act of 1874 will be enjoined from collecting water rents where the company has supplied water utterly unfit for domestic use or for steam purposes. Such a company is not bound to provide water that is chemically pure, but water that is ordinarily and reasonably pure. After having secured a proper source of supply the company is bound to exercise diligence in preserving the water from pollution, and in delivering it to the public in no worse condition than that in which it was taken from the source of supply.[71]

[68] Act of May 16, 1889, Sec. 2, P. L. 227, amending the Act of April 29, 1874, Sec. 34.

[69] Edgewood Water Co. *v.* Troy Water Co., 7 Pa. C. C. R. 476 (1889).

[70] Miller *v.* Windsor Water Co., 148 Pa. 429 (1892).

[71] Brymer *v.* Butler Water Co., 172 Pa. 489 (1896). See Act of June 10, 1881, P. L. 113, *supra.*

"The ownership of a corporation is as absolute and comprehensive as that of a private citizen. It includes the right to put a value upon its

While the court may not prepare a tariff of water rents, it can supervise a tariff established by the company. The question as to what is a reasonable and what is an oppressive charge was considered by the Supreme Court in the case of Brymer *v.* Butler Water Co., 179 Pa. 231 (1897), where Mr. Justice WILLIAMS said:

"Ordinarily that is a reasonable charge or system of charges which yields a fair return upon the investment. Fixed charges and the costs of maintenance and operation must first be provided for, then the interests of the owners of the property are to be considered. They are entitled to a rate of return, if their property will earn it, not less than the legal rate of interest; and a system of charges that yields no more income than is fairly required to maintain the plant, pay fixed charges and operating expenses, provide a suitable sinking fund for the payment of debts, and pay a fair profit to the owners of the property, cannot be said to be unreasonable. In determining the amount of the investment by the stockholders it can make no difference that money earned by the corporation, and in a position to be distributed by a dividend among its stockholders, was used to pay for improvements and stock issued in lieu of cash to the stockholders. It is not necessary that the money should first be paid to the stockholder and then returned by him in payment

property, and to determine on what terms it will part with it, or supply its customers with the commodity in which it deals, in the same manner that an individual or a partnership could do. But as the corporation derives its existence and its powers and franchises from the State, it is more directly accountable to the State than a natural person now is, under existing laws, for the exercise of good faith in the conduct of its business and for the reasonableness of its charges. The State intervenes for the protection of the citizen. When therefore a customer of a water company finds the company neglecting or refusing to furnish him with an adequate supply of water, or finds the water furnished to be unfit for domestic use, he is authorized by the Act of 1874 to make his complaint to the Court of Common Pleas of the proper county by petition. The court is thereupon required to investigate the subject and to 'dismiss the complaint, or compel the corporation to correct the evil complained of' as the evidence may require:" Brymer *v.* Butler Water Co., 179 Pa. 231 (1897).

for new stock issued to him. The net earnings, in equity, belonged to him, and stock issued to him in lieu of the money so used that belonged to him was issued for value, and represents an actual investment by the holder. If the company makes an increase of stock that is fictitious, and represents no value added to the property of the corporation, such stock is rather in the nature of additional income than that of additional investment. . . . The cost of the water to the company includes a fair return to the persons who furnished the capital for the construction of the plant, in addition to an allowance annually of a sum sufficient to keep the plant in good repair, and to pay any fixed charges and operating expenses. A rate of water rents that enables the company to realize no more than this is reasonable and just. Some towns are so situated as to make the procurement of an ample supply of water comparatively inexpensive. Some are so situated as to make the work both difficult and expensive. What would be an extortionate charge in the first case might be the very least at which the water could be afforded in the other."

Where a water company organized under the Act of 1874 has made a contract to supply a municipality with water, the municipality has the same right as a citizen to file a bill in equity to compel the company to supply the proper kind and quantity of water.[72]

[72] Du Bois Borough *v.* Du Bois City Water Works Co., 176 Pa. 430 (1896). In this case Mr. Justice MITCHELL said : "Reference was made in the court below and here to the Act of April 29, 1874, Sec. 34, Cl. 3, P. L. 94 (Purdon, 12 Ed. 955, Pl. 4), relating to gas and water companies, by which the Courts of Common Pleas are authorized on bill filed by any citizen using the water, alleging impurity or deficiency, to compel the water company to correct the evil complained of, and to make 'such order in the premises as may seem just and equitable.' The learned judge below was of opinion that this remedy did not apply to cases of contract, but only to water rights acquired by eminent domain under the act of 1874, and it has been argued here by appellees, citing Lehigh Water Company's Appeal, 102 Pa. 515, and Freeport Water Works Co. *v.* Prager, 129 Pa. 605, that this section applies only to private citizens, and does not in-

The franchises of a water company, incorporated under the Act of April 29, 1874, Section 34, paragraph 2, authorizing the incorporation of water companies for the supply of pure water, will not be forfeited in *quo warranto* proceedings where a jury specially finds that the water furnished by the corporation was "wholesome, but not pure."[73]

Where a water company files a bill against upper riparian owners to enjoin them from polluting a stream, it is proper to join the Commonwealth as a party to the bill.[74]

clude municipal corporations. Both these views, however, are erroneous. What was decided in those cases was that the exclusive privilege of furnishing water, given by the act to the first company erecting works, does not prevail against a city or borough building water works in its municipal capacity and under its general powers. In the present case the borough it not the builder or owner of the water works, but a mere consumer under contract, and stands upon the same basis as any private citizen in regard thereto. The remedy given by the act is intended to be adequate, and we see no reason why it may not be made so. The whole subject is put under the control of the court in the broadest terms, and being one which concerns the public interests may be treated with regard thereto, to the extent necessary, even to the reformation of the contract upon a basis just and equitable to both parties, where, as here, it was made in mutual mistake as to an essential fact, and a remedy for the difficulty may be found without violation of the main intent of both parties in the original instrument."

[73] Commonwealth *v.* Towanda Water Works, 1 Monaghan, 500 (1888).

[74] Commonwealth *ex rel. v.* Russell, 172 Pa. 506 (1896). In this case the complainants were "Commonwealth of Pennsylvania, *ex rel.* Henry C. McCormick, Attorney-General, and the Butler Water Company." The Court said :

"The fourth finding of law declared that the State was 'a party in name only,' and that neither 'the records nor the evidence disclosed any real plaintiff or complainant other than the water company.' Notwithstanding the name of the Commonwealth had been put on the record as a plaintiff at the instance of her attorney-general, and notwithstanding the conclusive evidence of the destruction of the water supply for all domestic purposes, on which the borough of Butler had been dependent for many years, the case was disposed of on the narrow ground covered by the rule in Sanderson's Case. The error of the learned judge lies in this treatment of the case. By this we must not be understood as holding that the rule applied by the learned judge is not applicable so far as the 'mere personal inconvenience' or injury of the water company is concerned, but that the 'public use' served by the company, and the public need of an adequate water supply affecting the health and comfort of thousands

Discretionary Powers—Contracts.

1205. Corporations heretofore or hereafter incorporated under the Act of Assembly, entitled "An act to provide for the incorporation and regulation of certain corporations,"

of citizens have not been considered at all. We cannot now take notice of and determine these questions, for there are additional findings both of fact and of law that should be made before this can be intelligently done. Among other subjects to be examined and passed upon are these: What was the situation of the valley or basin of the Connoquenessing when the water company appropriated the stream for the supply of Butler borough? Was it at that time a developed oil field or not? At what date did the pumping of salt water into the stream begin? What is the value of the daily or monthly output of oil by the defendants from their wells? What would be the approximate cost of conducting the salt water either by surface drain or by pipes to some point below the plaintiff's dam? Can the salt water be relieved of its salt by subsidence or filtration by the operators before turning it into the stream, and if so at what expense? Can the water of the stream be so cleansed by the company, and at what expense? Can the plaintiff command a sufficient supply of water by going above the defendants' wells for it, and could they then obtain pure water? If so, what would be the probable cost of such a change in the plant of the water company?

"When the case has thus been fully heard on its facts the questions we have suggested can be considered, and it will be practicable to say whether a great city stands on no higher ground, when the health and comfort of many thousands of its citizens are at stake, than Sanderson, when his private water works and fish pond were rendered useless by mine water. Whether, in other words, the Commonwealth in the exercise of its police power may not limit and restrict the individual in the exercise of admitted rights, when the welfare of the public requires it; or whether it is indeed true that the ownership of a few acres of land, or a leasehold interest therein, gives to the holder an unqualified right to destroy the water supply of a city in the effort to develop some subterranean value in his land. If this unqualified right resides in the owner of the land then it is not easy to see how the water company is in default for failing to do what it is thus determined it has no power to do, viz., to protect the stream from pollution by the landowners within its basin. There would seem upon this view of the law to be no remedy provided for the public or the water company. The latter must lose its plant, its business, and for all practical purposes its franchises. The former must suffer the pollution and the actual deprivation of its water supply. The court can require the company to be diligent in its efforts to procure for the municipality a sufficient supply of pure water, if it can be had from sources reasonably accessible to its plant, and it can restrain the collection of rents if such water is not furnished. It cannot, however, require the company to locate its plant or to seek a new supply to reach which

approved April 29, 1874, and the supplements thereto, for the supply, storage, or transportation of water and water power for commercial and manufacturing purposes, be and the same are hereby authorized and empowered to determine the character, design, and construction of the works and the use to be made of the water and water power of such companies, in order that the same may be supplied to the public to the best advantage, and by themselves, their agents, engineers, and workmen, cause to be located, constructed, maintained, repaired, and operated under the law and supplements to which this is a further supplement, the said works and all machinery, dams, buildings, cisterns, races, canals, waterways, reservoirs, pipes, conduits, lines, plants, apparatus, fixtures, and appliances deemed necessary, requisite and proper for said purposes, and it shall and may be lawful for such corporations from time to time to contract with any individual or corporation of this or any other State for the construction, operation, use, and maintenance of their works or any part thereof as aforesaid, and to mortgage their said property, real, personal, and mixed, and franchises to any person or corporation of this State or elsewhere, either directly or as trustee, to secure the payment of such indebtedness as may be incurred or created for the purpose of constructing and erecting the said works, or as a guaranty for the faithful performance of contracts and covenants on the part of such water and water power company to be per-

would involve an expense greater than its entire capital stock. The location of the plant and the selection of the water supply is for the company to determine. The sufficiency and character of the supply may be investigated by the court and the company required to meet fairly the public use it has undertaken to serve or cease to collect charges therefor. The owner of the oil well, however, is thought to be independent both of the water company whose plant he destroys and of the public whose water supply he pollutes. The mere fact that the plant is owned by a corporation was rightly held by the court below to furnish no room for a distinction between Sanderson's Case and this. Corporations hold their titles, as individuals do, under the Commonwealth, and subject to the same incidents as other owners. This is well settled. Among the more recent cases on this subject is the Appeal of the Pittsburgh Junction R. R. Co., 122 Pa. 511. But in all these cases so far as I am familiar with them, the private right of the corporation was invaded. The public interest was not affected, and therefore not considered. The question of the status of the public is now clearly raised. It should be fully considered and decided."

formed, including the guaranty of the payment of the bonds, the interest thereon of any other corporation, party to such contract, and the stock in any company incorporated for the purposes named in this act may be owned and held by corporations of this or other States of the United States.[75]

Power of Water Companies to Distribute Electricity.

1206. Corporations organized, or hereafter to be organized, under the laws of this State for the purpose of supplying water power to the public, and other corporations owning or controlling water power, may develop electric power for commercial purposes by means of water power, and shall have authority to supply current and power to the public, individuals, firms, and corporations at such prices as may be agreed upon, and shall have authority to make, erect and maintain the necessary buildings, machinery, and apparatus for developing power and current, and to distribute the same to any place or places, with the right to enter upon any public road, street, lane, alley, or highway for such purposes, and to alter, inspect, and repair its system of distribution: Provided, that no such company shall enter upon any street or alley in any city, borough, or township of this Commonwealth, until after the consent to such entry of the councils of the city or borough or supervisors of the township in which such street or alley may be located shall have been obtained.[76]

Trespassing on Lands of Water Company.

1207. That any person who shall willfully enter upon the inclosed land of any company incorporated under the laws of this Commonwealth for the purpose of supplying water to the public for drinking purposes, on which land is erected any dam, reservoir, pond, or other artificial means for storing water, and pollute or attempt to pollute the water on such land, shall be deemed, and the same is hereby declared to be a misdemeanor, and may be prosecuted and convicted as such under the laws of this Commonwealth, and [on] conviction thereof in the Court of Quarter Sessions of the proper county shall be fined not exceeding fifty dollars, and imprisoned not exceeding sixty days.[77]

[75] Approved July 2, 1895, P. L. 432.
[76] Act of July 2, 1895, P. L. 425.
[77] Act of June 24, 1895, Sec. 1, P. L. 231.

Watchman.

1208. That any duly constituted watchman of any such water company, or any constable or policeman, is hereby authorized and empowered, upon his own view of any such trespass, to make arrests and bring before any alderman or magistrate of the proper county offenders found violating the provisions of this act.[78]

Purchase and Condemnation of Lands.

1209. Before any such water company shall proceed to occupy any land or inclosure, or to obtain and use any material therefrom, for the purpose mentioned in this section, it shall be lawful for them to agree with the owner or owners thereof for the purchase of so much thereof as may be necessary, or as to the amount of injury sustained thereby; but in case they cannot agree, proceedings shall be had as provided in Section 41 of this act: Provided, that companies organized for any of the purposes set forth in the eighteenth clause of the second section of this act, whether such companies shall have been organized under any special Act of Assembly, or under the general acts, in said eighteenth clause enumerated, and not having for their object the supplying of any village, borough, or city with water, shall have all the rights, privileges, and powers conferred by the said eighteenth clause, and the right to take lands, waters, or rivulets shall be exercised in the manner provided in the forty-first section of this act.[79]

Title to land entered upon, against the consent of the owner, by a water compnay, under their act of incorporation, for the purpose of constructing a reservoir, does not pass to the company until compensation or adequate security is given therefor.[80]

Lease of Lands of Water Companies Confirmed.

1210. Whenever any water company incorporated for the purpose of supplying water to the public shall have heretofore

[78] Act of June 24, 1895, Sec. 2, P. L. 231.

[79] Act of June 12, 1879, P. L. 177, amending the Act of April 29, 1874, Sec. 34, Cl. 4, P. L. 94.

[80] Easton Borough's Appeal, 47 Pa. 255 (1864).

acquired any lands in this Commonwealth, by purchase or by lease, along or contiguous to streams of water or reservoirs from which water is taken for public use, that may be necessary to preserve the water supply of such water company from contamination, the said company shall hold the said lands to them, their successors, and assigns in fee simple, or for the term for which the said lands may have been granted or leased to them, subject, however, to any reservation, limitation, or condition under or upon which such lands may have been conveyed or leased.[81]

Where Water Company Overflows Public Roads.

1211. Whenever any water company, incorporated for the purpose of supplying water to the public, shall have found, or shall find it necessary, in storing water, to occupy and flow with water [any] portion of any turnpike or any public road in this Commonwealth, the said company shall cause the same to be reconstructed forthwith, at their own proper expense, on a favorable location, to be approved by the Court of Quarter Sessions of the proper county, and in as perfect a manner as the original road, and are authorized to condemn land for that purpose, whenever an agreement as to price cannot be had with the owners.[82]

Condemnation Proceedings—Compensation for Land Taken.

1212. Any such water company shall be and is hereby empowered to acquire and hold by purchase, or condemnation, such lands along and contiguous to streams of water, or reservoirs from which water is taken for public use, as may be necessary to preserve them from contamination: Provided, that no land shall be taken for the uses mentioned in this act until just compensation shall have been made for property taken, injured, or destroyed, which shall be paid or secured before such taking, injury or destruction: And provided further, that any owner of land along said streams shall have the use of the water for farming and domestic purposes, with free ingress and egress at all times to such streams.[83]

[81] Act of June 18, 1895, P. L. 195.
[82] Act of May 26, 1893, Sec. 1, P. L. 158.
[83] Act of May 26, 1893, Sec. 2, P. L. 158.

Ascertainment of Damages for Land Taken.

1213. The damage incurred in changing the location of any turnpike or public road as authorized by the first section of this act, and in acquiring lands to preserve water supply from contamination, as authorized by the second section of this act, shall be ascertained and paid by such water company in the same manner as is provided for in regard to the taking of lands, waters, materials, property, and franchises, for the public purposes of such water company, and no lands, property, or franchises shall be taken for the uses mentioned in this act until just compensation shall have been paid or secured therefor.[84]

Limitation of Capital Stock of Water Companies.

1214. The capital stock of every such corporation that has or requires capital stock, shall consist of not more than one million dollars, except companies incorporated for the purpose of supplying the public with water, whose capital stock shall not exceed two million dollars, and shall be divided into shares of not more than one hundred dollars each; and all subscriptions to the capital stock shall be paid in such instalments and at such times as the directors may require, and if default be made in any payment, the person or persons in default shall be liable to pay, in addition to the amount so called for and unpaid, at the rate of one-half of one per centum per month for the delay of such payment, and the directors may cause suit to be brought for the recovery of the amount due, together with a penalty of one-half of one per centum per month, as aforesaid, or the directors may cause the stock to be sold in the manner provided in Clause 2 of Section 39 of this act; and no stockholder shall be entitled to vote at any election, or at any meeting of the stockholders, on whose share or shares any instalments or arrearages may have been due and unpaid for the period of thirty days immediately preceding such election or meeting. The shares of the capital stock of every such company may be transferred on the books of the company, in person or by attorney, subject to such regulations as the by-laws may prescribe; but the provisions of this section shall not apply to corporations in which by this act different and other rules

[84] Act of May 26, 1893, Sec. 3, P. L. 158.

and provisions are enacted for their regulation and government.[85]

Increase of Stock of Water Companies.

1215. Corporations created under and by virtue of the said act for the purpose of supplying water to the public in cities of the first and second class, shall have the right to increase the amount of their capital, from time to time, to such amount as shall be found requisite and exigible for the purposes thereof: Provided, that the amount of capital stock, so authorized, shall not exceed twenty millions of dollars.[86]

[85] Act of May 9, 1889, Sec. 1, P. L. 180.
[86] Act of May 25, 1887, P. L. 269.

CHAPTER LXXXIII.

YOUNG MEN'S CHRISTIAN ASSOCIATION.

1216. Incorporation.
1217. General Powers.
1218. Requisites of Charter.
1219. Notice of Application to be Given.
1220. Acknowledgment of Certificate—Proceedings on Application.
1221. Constitution and By-Laws—Election of Directors.
1222. Board of Trustees.
1223. Management and Disposition of Real Property.
1224. Officers not to be Individually Liable for Debts.
1225. Amendment of Charter.
1226. Charter may be Revoked.

Incorporation.

1216. From and after the passage of this act any ten or more persons, being citizens and residents within this State, and having associated themselves as a young men's Christian association, for the improvement of the spiritual, mental, social, and physical condition of young men, by the support and maintenance of lecture rooms, libraries, reading rooms, religious and social meetings, gymnasiums, and such other means and services as may conduce to the accomplishment of that object, according to the general rules and regulations of the State Young Men's Christian Association of Pennsylvania, a corporation under the laws of the State, may be incorporated under the provisions of this act for the object hereinbefore mentioned, and when so incorporated, each of them, by virtue of its existence as such, shall have the following powers:

General Powers.

1217. I. To have succession by its corporate name perpetually, subject to the power of the General Assembly under the Constitution of this Commonwealth.

II. To maintain and defend judicial proceedings.

III. To make and use a common seal and alter the same at pleasure.

IV. To be capable of taking, receiving, purchasing, holding, and transferring real and personal property for the purpose of its incorporation, and for no other purpose.

V. To elect, appoint, and remove the officers and agents for the management of its business and carrying out of its objects, and to allow them a suitable compensation.

VI. To make a constitution and by-laws for the management of its affairs not inconsistent with the Constitution and laws of the State.

VII. To enter into any obligation necessary to the transaction of its affairs.[1]

Requisites of Charter.

1218. The charter of such intended corporation must be subscribed by five or more persons, citizens of this Commonwealth, and shall set forth:

I. The name of the corporation.

II. The purpose for which it is formed.

III. The place or places where its business is to be transacted.

IV. The names and residences of the subscribers.

V. The number and names of its directors, with the term or terms of years for which they have been chosen, and also the names of not less than six trustees who, together with the president of the association, shall form a board of trustees, with the term or terms of years which each is to serve.[2]

Notice of Application to be Given.

1219. Notice of intention to apply for any such charter shall be inserted in two newspapers of general circulation printed in the proper county for three weeks, setting forth briefly the character and object of the corporation to be formed and the intention to make application therefor.[3]

Acknowledgment of Certificate—Proceedings on Application.

1220. The said certificates of incorporation shall be ac-

[1] Act of May 9, 1889, Sec. 1, P. L. 163.
[2] Act of May 9, 1889, Sec. 2, P. L. 163.
[3] Act of May 9, 1889, Sec. 2, P. L. 163.

knowledged by at least five of those who subscribe to them, before the recorder of deeds of the county in which the business of the corporation is to be transacted, to be their act and deed, and the same being duly certified under the hand and official seal of the said recorder of deeds, shall be presented to a law judge of the said county, accompanied by proof of the publication of the notice of such application, who is hereby required to peruse and examine said instrument, and if the same shall be found to be in the proper form and within the purposes named in this act, he shall indorse thereon these facts, and shall order and decree thereon that the charter is approved, and that upon the recording of the said charter and order, the subscribers thereto and their associates shall be a corporation for the purposes and upon the terms therein stated, and said order and charter shall be recorded in the office for the recording of deeds in and for the county aforesaid, and from thenceforth the persons named therein, and subscribing the same, and their associates and successors, shall be a corporation by the name therein given.[4]

Constitution and By-Laws—Election of Directors.

1221. The constitution and by-laws of every corporation created under this act, or having its charter amended under the same, shall be deemed and taken to be its law, subordinate to this act, the charter of the same, the Constitution and laws of this Commonwealth, and the Constitution of the United States. They shall prescribe the time and place of meeting of the corporation, the time, manner, and mode of the election of directors and other officers, and their powers and duties, with the length of term or terms of office and the number of members necessary to constitute a quorum at any of its meetings of directors, trustees, or members, and such other matters as may be pertinent and necessary for the carrying out of its objects.

In case the election of directors shall not be made on the day designated therefor, such association shall not be dissolved, but such election may be held on any other day in such manner as may be directed by the by-laws of such corporation.[5]

[4] Act of May 9, 1889, Sec. 2, P. L. 163.
[5] Act of May 9, 1889, Sec. 3, P. L. 163.

Board of Trustees.

1222. Each member of the board of trustees shall be a member of one of the protestant evangelical denominations, but a majority of such members, exclusive of the president of the association, shall not be members of any one denomination. The several trustees shall hold office for such time as may be prescribed by the charter, and when a vacancy occurs in said board of trustees, by expiration of term or otherwise, the same shall be filled by a majority vote of the remaining trustees, from nominations to be made by the board of directors of the corporation.[6]

Management and Disposition of Real Property.

1223. The real property of the corporation shall be managed by the board of directors of such corporation, but all real property, which shall be given to or acquired by such corporation, and all gifts and bequests of money to be held in trust, shall be held by the board of trustees; but no real property belonging to an association so incorporated shall be conveyed, disposed of, or mortgaged by said board of trustees, except with the consent of the board of directors of said corporation. The income which the said board of trustees shall receive from the property under its control and the said property shall be devoted to the purposes of the corporation, and for no other purpose, and so long as the directors of the corporation shall so expend the same, the income of the property so controlled by said board of trustees shall be paid over to the treasurer of the said board of directors.[7]

Officers Not to be Individually Liable for Debts.

1224. The officers and members of corporations created, or amending their charters, under the provisions of this act, shall not be individually liable for the debts of said corporation.[8]

Amendment of Charter.

1225. Any Young Men's Christian Association incorporated in this State, either under this act or any other general or special Act of the General Assembly, may have its charter

[6] Act of May 9, 1889, Sec. 4, P. L. 163.
[7] Act of May 9, 1889, Sec. 5, P. L. 163.
[8] Act of May 9, 1889, Sec. 6, P. L. 163.

improved, amended or altered under this act as often as it may be desirous of doing so, provided it shall specify the improvements, amendments, or alterations which are, or shall be desired, and exhibit the same to the Court of Common Pleas of the proper county in which said corporation is situated as aforesaid, when if said court shall be of opinion such alterations are or will be lawful and beneficial, and do not conflict with the requirements of this act or of the Constitution, it shall be the duty of said court to direct notice to be given, as directed in the second section of this act, of such application, and after decree made and such amendments are recorded, the same shall be deemed and taken to be a part of the charter of said corporation.[9]

Charter May be Revoked.

1226. The General Assembly reserves the power to revoke or annul any charter of incorporation granted or amended under this act whenever in the opinion of the said General Assembly it may be injurious to the citizens of this Commonwealth, in such manner, however, that no injustice shall be done to the corporators or their successors.[10]

[9] Act of May 9, 1889, Sec. 7, P. L. 163.
[10] Act of May 9, 1889, Sec. 8, P. L. 163.

CHAPTER LXXXIV.

MINING COMPANIES INCORPORATED UNDER ACT OF 1854.

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Organization of Companies to Develop Mineral Lands.

1227. At any time hereafter when any five or more persons, who may be joint owners, tenants in common, or joint tenants of mineral lands within this Commonwealth, may desire to form a company, under the provisions of this act, for the purpose of developing and improving such mineral lands, it shall be lawful for any company formed under the provisions of this act, to construct railroads in and upon their lands; also to erect dwelling houses and other necessary buildings; also all necessary machinery for raising, moving, and preparing all minerals, found in their lands, for market, and all other improvements necessary to prepare their lands for leasing: Provided, that before proceeding with any improvement they shall sign and acknowledge, before some officer competent to take acknowledgments of deeds, a certificate in writing, in which shall be stated the corporate name of said company, and the object for which it has been formed; a description of the lands, where located, and the number of acres; the number of shares into which said land has been divided; the residence of the owners, and the number of shares owned by each; the name of the county in which the chief operations of the company are to be carried on, and the number and names of the directors who shall manage the affairs of said company until the next annual election; which certificate shall be submitted to, and be examined by the attorney-general of the Commonwealth, and by him certified to be properly drawn and signed, and that the same is in conformity with the Constitution and laws of this Commonwealth; for which service the persons applying for such corporation shall pay him five dollars; and when the said certificate shall be so certified by the attorney-general, the same shall be recorded

in the office for recording of deeds, in the county in which the business of the company is to be carried on as aforesaid, in a suitable book to be kept for that purpose; and a copy of said certificate, duly certified by the recorder of said county, shall be filed in the office of the secretary of the Commonwealth; and the said secretary, upon receipt of such certified copy, shall enter thereon, and upon the original certificate to be retained by the company, the day and date of the filing of the same; and shall, moreover, cause a true copy of such certificate to be recorded at length in a suitable book to be kept in his office for that purpose, for which he shall receive the sum of five dollars: Provided, that none of the provisions of this act shall extend to, or embrace the counties of Schuylkill, Northampton, Lehigh, and York.[1]

Act Extended to Mining and Manufacturing Carbon Oils.

1228. The provisions of an act to enable joint tenants, tenants in common, and adjoining owners of mineral lands in this Commonwealth, to develop the same, passed April 21, 1854, and the supplements thereto, be and the same are hereby extended to mining for carbon oils, manufacturing, refining and selling, or conveying the same to market.[2]

To Manufacturing Barrels.

1229. It shall be lawful for any five or more persons, who may be joint owners, tenants in common, joint tenants, or lessees of timber lands, within this Commonwealth, to form

[1] Act of April 21, 1854, Sec. 1, P. L. 437.

The Act of July 18, 1863, Sec. 1, P. L. 1102 (1864), provided as follows: "Three or more persons who shall have associated themselves together, by articles of agreement in writing, for the purpose of carrying on any mechanical, mining, quarrying, or manufacturing business in this Commonwealth, except that of distilling, or manufacturing intoxicating liquors, and shall have complied with the provisions of this act, shall be and remain a corporation, under any name indicating their corporate character, assumed in their articles of association, and which is not previously in use by any other corporation or company."

This act is repealed by the Act of April 29, 1874, P. L. 73, Sec. 46, so far as regards the incorporation of such companies, and whatever other provisions are inconsistent with that act. The bulk of the act, however, is still in force as to companies incorporated prior to 1874 which have not accepted subsequent legislation.

[2] Act of May 1, 1861, Sec. 1, P. L. 438.

a company under the provisions of the act to which this is a supplement, and of the several supplements thereto, for the purpose of manufacturing barrels and other wooden vessels by machinery, and selling the same: Provided, that such object of the company be stated in their certificate for incorporation.[3]

Act Extended to Include Mining and Manufacturing Coal, Fire Clay, and Other Minerals.

1230. The second proviso of the second section of an act to enable joint tenants, tenants in common, and adjoining owners of mineral lands in this Commonwealth, to manage and develop the same, approved April 21, 1854, is hereby repealed; and that companies now formed, or that may hereafter be formed under the act mentioned in the foregoing section, be and they are hereby authorized, in addition to the rights and privileges conferred by said act, to engage in and carry on the mining and preparing for market, coal, fire clay, and other minerals found on or in their lands, manufacturing the products of the same, selling or conveying the same, and the products thereof, to market: Provided, that the liability of the stockholders created by said act shall extend to include all debts contracted by them for work and labor done or materials furnished for opening, improving and preparing their lands for mining purposes, and all debts contracted by the said corporation in their business of mining, selling, and conveying to market the minerals on or in their said lands: Provided also, that such companies shall make the return, and pay the tax on dividends, to which the stock of such company shall be liable under the existing laws of this Commonwealth: Provided, that the amount of capital stock shall not exceed five hundred thousand dollars.[4]

When Letters-Patent Shall Issue.

1231. In all cases where companies have been or shall hereafter be formed under the provisions of an act entitled "An act to encourage manufacturing operations in this Commonwealth," approved April 7, 1849, or any of its supplements, or under the provisions of the act entitled "An act

[3] Act of February 10, 1865, Sec. 1, P. L. 1.
[4] Act of April 9, 1856, Sec. 1, P. L. 283.

to enable joint tenants, tenants in common, and adjoining owners of mineral land in this Commonwealth to manage and develop the same," approved April 21, 1854, it shall be lawful for the governor whenever the certificate of the organization of any such company shall have been duly executed in conformity with the provisions of the said act or acts, and filed in the office of the secretary of the Commonwealth as therein provided, to issue letters-patent under the great seal of the Commonwealth, declaring the subscribers to the stock of any such company, and also those who may hereafter become subscribers or holders of the said stock, to be a body politic in deed and in law, in the same manner and form as is now provided by law in other cases.[5]

Correction of Errors in Incorporation.

1232. When any error or omission may have occurred, or may occur, in the incorporation or organization of any such company, the stockholders, at a meeting specially called for the purpose, under their by-laws, may amend and confirm such incorporation or organization, and all proceedings thereunder, and upon filing a certificate thereof, duly attested, with the secretary of the Commonwealth, such incorporation, and the acts of said company, shall be held to be regular and valid, as if said error or omission had not occurred: Provided, that before the filing of said certificate, it shall be submitted to the attorney-general of the Commonwealth, and by him certified to be in conformity with the act to which this is a supplement, and the several supplements thereto: And provided further, that the intervening rights of third parties shall not be affected by such proceeding.[6]

Duration—Corporate Powers.

1233. When the certificate shall have been recorded and filed as aforesaid, the persons who shall have signed and acknowledged the same, and their successors, shall for the term agreed upon, not exceeding twenty years from the filing of such certificate in the office of the secretary of the Commonwealth as aforesaid, be a body corporate and politic, in fact and in law, by the name stated in such certificate, and

[5] Act of May 7, 1855, Sec. 1, P. L. 462.
[6] Act of March 27, 1865, Sec. 6, P. L. 34.

by that name have succession, and be capable of suing and being sued, and shall, by their corporate name, be capable in law of holding and conveying the real estate described in said certificate, and such personal estate as may be necessary or convenient to carry on the business or operations named in such certificate: Provided, that the quantity of land to be held by such company shall not exceed three thousand acres.[7]

Extension of Charters—Increase of Capital Stock.

1234. It shall be lawful for any corporation, erected under the act to which this act is supplementary, and its several supplements, to extend the time of the duration of such corporation for any term not exceeding twenty years, from the day upon which any such company was incorporated; and it shall also be lawful for any such company to increase its capital to any amount not exceeding five hundred thousand dollars.[8]

Notice of Meeting for That Purpose to be Published and Sent to Stockholders.

1235. Whenever any company, incorporated under the provisions of the act to which this [is] supplementary, and its several supplements, shall desire to call a meeting of the stockholders thereof, for the purpose of increasing or diminishing the amount of its capital stock, or of extending its charter, it shall be the duty of the directors to publish a notice, signed by at least a majority of them, in at least two newspapers, printed in the county where the operations of such company shall be carried on, if so many are printed therein, and if not, then in two newspapers printed in adjoining counties, once a week, during three successive weeks, and to deposit a written or printed copy thereof in the post-office, addressed to each stockholder, at his usual place of residence, at least two weeks previous to the day designated for holding such meeting; which notice shall specify the object of such meeting, the time and place when and where such meeting shall be held, and the amount to which it is desired to increase or diminish the capital of such company,

[7] Act of April 2, 1854, Sec. 2, P. L. 437.
[8] Act of April 10, 1862, Sec. 1, P. L. 403.

or the time to which it is proposed to extend the charter of such corporation.[9]

Organization of Meeting—Proceedings.

1236. If, at the time and place specified in the notice provided for in the preceding section, stockholders shall appear in person, or by proxy, representing not less than two-thirds of all the shares of the stock of the corporation, they shall organize, by choosing one of the directors, if present, and if not, then one of the stockholders, as chairman of the meeting, and some suitable person as secretary, and the chairman shall appoint two of the stockholders present to act as tellers, when they shall proceed to a vote of those present, in person or by proxy; and if, on canvassing the votes given, it shall appear that the holders of two-thirds of all the shares composing said capital have voted in favor of increasing or diminishing the amount of the capital stock, or of extending the charter of such corporation, then, and not otherwise, a certificate of the proceedings shall be made out, showing a compliance with the provisions of this act, the amount of capital paid in, and the amount to which the capital shall be increased or diminished, or specifying the time to which the charter of such corporation is extended, as the case may be, which certificate shall be signed by the said chairman, secretary and tellers, verified by their respective oaths or affirmations, and which, so signed and verified, shall be recorded, and a certified copy thereof filed in the office of the secretary of the Commonwealth; and when so recorded and filed, the capital stock of such corporation shall be increased or diminished to the amount specified in such certificate, or the charter of such corporation shall be extended for such time as is specified in such certificate, as the case may be.[10]

Charter may be Extended for an Additional Term.

1237. Whenever any company, formed under the act to which this is a supplement, shall desire to extend its corporate existence for a further term of twenty years, it may do so by a vote of its stockholders, representing a majority of its stock; but in that case, a certificate thereof, signed and

[9] Act of April 10, 1862, Sec. 2, P. L. 403.
[10] Act of April 10, 1862, Sec. 3, P. L. 403.

acknowledged by the president and a majority of the stockholders, and recorded in the county where the original certificate of association was recorded, shall be filed with the secretary of the Commonwealth, and the like proceedings shall take place in case of any subsequent extension of the existence of such company; and thereupon it shall possess all the powers and privileges, and be subject to all the liabilities mentioned in said act, and the supplements thereto, during such extended term of twenty years: Provided, that no such certificate of extension shall be filed, except during the last five years of the corporate existence of such company.[11]

Annual Meetings.

1238. The annual meetings of the stockholders of any company, incorporated under the act to which this is a supplement, shall be held within this Commonwealth, at such place as may be designated in the by-laws; and where a majority of the directors shall reside out of the State, the meetings of said directors may [be] held, and the office of the company located, at such place as may be most convenient to the said directors, upon filing, in the office of the auditor-general, a certificate of the location of said office, and the names of the officers and directors of said company.[12]

Number of Directors.

1239. The board of directors of any company incorporated under the said act may consist of any number not less than five, nor more than thirteen, and in the case of any company heretofore organized thereunder, it may be increased to any number not exceeding thirteen, as follows: The president and existing directors, or a majority thereof, shall make and sign a certificate declaring how many directors the said company shall have for its future management, which certificates shall be recorded in the office of the secretary of the Commonwealth; and thereafter the stockholders shall, at their annual elections, elect said number of directors, and the number of directors as aforesaid may, in like manner, be reduced at any time to a number not less than five.[13]

[11] Act of March 27, 1865, Sec. 7, P. L. 34.
[12] Act of March 27, 1865, Sec. 10, P. L. 34.
[13] Act of March 27, 1865, Sec. 3; P. L. 34.

Election of Directors.

1240. The stockholders shall annually elect five directors for the management of the affairs of the company, at such time and place, and upon such notice as may be fixed by the by-laws of the company, to serve for one year, and until others are elected, and the company shall not be dissolved by reason of a failure to elect such directors at the proper time and place. The election shall be conducted by ballot, and such of the stockholders of the company as shall attend for that purpose, shall be entitled in person or by proxy to one vote for each share of stock held by him or them. And the directors shall elect one of their number president of the board, and shall have full power to make by-laws, and to appoint such officers and agents as they shall deem expedient for the well conducting and management and transacting the business of the company, declare and provide for the payment of the dividends to the stockholders, and in general to superintend the business and affairs of the company: Provided, such by-laws shall not be repugnant to any of the laws of this Commonwealth or of the United States.[14]

Voting.

1241. No stockholder shall be allowed to cast his vote for the election of any officer or officers of any oil or other mining company, incorporated by the laws of this Commonwealth, unless such stockholder shall produce his certificate of stock, with power of attorney, properly stamped, or such other satisfactory evidence that he, she, or they are *bona fide* owners of such stock to be so voted, as the secretary and other officers of said company shall require.[15]

Land to be a Common Stock.

1242. The land to be held by the company shall form a common stock, and shall be divided into shares of the value of fifty dollars each, and apportioned by the said company among the owners and subscribers to said stock, according to their respective interests, for which certificates of stock shall be issued, and be assignable and transferable in such a way and subject to such conditions as the said company may from time to time prescribe, and the said shares of stock so

[14] Act of April 21, 1854, Sec. 4, P. L. 437.
[15] Act of April 15, 1867, Sec. 1, P. L. 81.

created shall be, for all legal purposes whatsoever, deemed and treated as personal estate.[16]

Value of Shares and Capital Stock may be Reduced.

1243. Any companies which have been or may hereafter be incorporated under the provisions of the act to which this is a supplement, may divide the land authorized to be held by them into shares of the value of not less than ten dollars; and the capital stock may be reduced to correspond with the reduction in the value of the shares hereby authorized.[17]

Valuation of Land.

1244. Any company which may hereafter be incorporated under the provisions of the act to which this is a supplement, for the purpose of mining or improving mineral lands in this Commonwealth, may divide the land authorized to be held by them into such number of shares, not exceeding two hundred thousand, and of such value, not less than five dollars per share, as shall in each particular be designated in the certificate in writing, required to be signed and acknowledged by the provisions of the act to which this is a supplement.[18]

Value of Shares may be Fixed at One Dollar.

1245. Any company which may hereafter be incorporated under the provisions of the act to which this is a supplement, may divide the lands authorized to be held by them into such number of shares, not exceeding five hundred thousand, and of such value, not less than one dollar per share, as shall in each particular be designated in the certificate in writing, required to be signed and acknowledged by the provisions of the act to which this is a supplement.[19]

Capital Stock may be Increased, on Acquisition of Additional Estate.

1246. When any company incorporated under the act to which this is a supplement, shall acquire, by authority of law, other real or personal estate than is described in the original

[16] Act of April 21, 1854, Sec. 3, P. L. 437.
[17] Act of April 12, 1855, Sec. 1, P. L. 217.
[18] Act of July 22, 1863, Sec. 1, P. L. 1098 (1864).
[19] Act of March 27, 1865, Sec. 8, P. L. 34.

certificate of the said company, the same may be added to and form a part of their common stock, and be divided by the directors into shares, in the manner now prescribed by law: Provided, that whenever the capital stock of a company shall be increased, as aforesaid, the directors thereof shall call in and cancel the old certificates of stock, and issue new certificates in lieu thereof, representing the entire capital stock so increased, and shall pay to the Commonwealth a tax of one-half of one per centum on the amount added, as aforesaid, to their original capital, in four equal annual instalments, the first to be paid within one year after the said increase thereof.[20]

Special Stock may be Issued by Vote of Three-Fourths of Stockholders.

1247. Every company heretofore or hereafter incorporated under the provisions of the Act of April 21, 1854, and the various supplements thereto, may, by a vote of three-fourths of the general stockholders, at a meeting duly called for the purpose, issue two kinds of stock, namely, general stock and special stock; the special stock shall at no time exceed one-half of the stock of the corporation, and shall be subject to redemption, at par, after a fixed time, to be stated in the certificates; holders of such special stock shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed or half-yearly sum or dividend, to be expressed in the certificates, not exceeding 4 per centum, and they shall in no event be liable for the debts of the corporation, beyond their stock.[21]

Oil Mining Companies may Alter Capital Stock, and Number and Value of Shares.

1248. At any meeting of the stockholders of any company incorporated for the purpose of mining for crude oil or petroleum, and selling or conveying the same to market, under the laws of this Commonwealth, where a majority of the stock of such companies is represented, it may be determined by a vote of the majority of the stock of the company, that the capital thereof, as well as the number of shares,

[20] Act of March 27, 1865, Sec. 9, P. L. 34.
[21] Act of March 31, 1866, Sec. 1, P. L. 93.

and the par value thereof, may be altered and changed, to such an amount, number, and value as those representing a majority of the stock shall deem advisable; and thereupon a certificate, stating the amount of the capital, the number of shares, and the par value thereof, so changed as aforesaid, shall be made and signed by the president and a majority of the board of directors of the company, and duly acknowledged by them, and the same placed on record, in the recorder's office, where the original certificate of the company is recorded, and a certified copy thereof filed with the auditor-general of this Commonwealth: Provided, that the notice of the meeting of the stockholders shall be given according to the by-laws of the company, stating succinctly in the notice the objects of the meeting.[22]

Such Companies to be Taxed on Reduced Capital.

1249. All such companies organized under the aforesaid Act of April 21, 1854, and its supplements, shall not be liable, under the provisions of said act, in the aggregate, for more than one-half of one per centum on the capital stock as altered and changed as aforesaid; and whatever portion, if any, of the said corporation tax shall still remain unpaid to the Commonwealth, the same shall be due and payable only out of the first net earnings, or income, of such companies hereafter realized.[23]

Certain Companies may Alter Amount of Capital and Value of Shares.

1250. The provisions of the first section of the act approved April 12, 1867, entitled "An act authorizing the reduction of the capital stock of oil companies, and the equalization of the taxes relative thereto," be and the same are hereby extended and made applicable to all companies incorporated under the provisions of the act approved April 21, 1854, entitled "An act to enable joint tenants, tenants in common, and adjoining owners of mineral lands in this Commonwealth to manage and develop the same," and the supplements thereto.[24]

[22] Act of April 12, 1867, Sec. 1, P. L. 72.
[23] Act of April 12, 1867, Sec. 2, P. L. 72.
[24] Act of May 8, 1871, Sec. 1, P. L. 265.

Stock to be Distributed Pro Rata—Tax on Additional Capital.

1251. It shall be lawful for any company incorporated under the provisions of the act to which this is a supplement, and its several supplements, to increase its capital stock, in the manner and subject to the provisions of an act approved April 10, 1862, entitled "A supplement to an act entitled 'An act to enable joint tenants, tenants in common, and adjoining owners of mineral lands in this Commonwealth to manage and develop the same,' " passed April 21, 1854: Provided, that the amount of additional stock so issued shall not exceed five hundred thousand dollars, and that upon such increase being made, the stockholders of such company may provide for the time and manner of the *pro rata* distribution or the price or terms of the sale of the additional capital stock: Provided, that on making such increase of capital, notice shall be forthwith given thereof to the auditor-general; and that upon such increase of capital said corporation shall pay into the treasury of the Commonwealth such bonus and taxes as are now or may hereafter be required by law.[25]

Individual Liability of Stockholders.

1252. The stockholders in any company formed in pursuance of the provisions of this act shall be jointly and severally liable in their individual capacities for all debts contracted by them for work and labor done or materials furnished for the opening, improving, and preparing their said lands for mining purposes aforesaid: Provided however, that said companies may provide against contracting any such debts as aforesaid, by the adoption of a by-law requiring all payments for the purposes aforesaid to be cash, and in any such case if any officer, agent, or employee of any such company shall contract any debt for the purposes aforesaid in violation of any such by-law, such officer, agent, or employee shall be deemed guilty of a misdemeanor, and upon conviction thereof, in the Court of Quarter Sessions of the peace of the county where such debt shall have been contracted, he, she, or they shall be sentenced to pay a fine not less than the debt so contracted, nor more than double the same, and to

[25] Act of December 16, 1869, Sec. 1, P. L. 1372 (1870).

undergo an imprisonment in the proper jail of such county not exceeding twelve months.[26]

Lands Held Under Lease Included.

1253. The provisions of the act to which this is a supplement, and the various supplements thereto, shall apply to lands held under lease, as well as to lands held in fee simple.[27]

Lands Held Under Grant, and by Adjoining Owners, Included.

1254. The provisions of the act to which this is a supplement, and the various supplements thereto, shall apply to lands held under grant in perpetuity of the mining privilege therein, as well as to lands held in fee simple, or under lease, and to adjoining owners, as well as to joint owners, and whether the legal and equitable estates be joint, or several, in said owners.[28]

Title to Such Lands to Vest Free from Dower.

1255. It shall be deemed and taken to be the true intent and meaning of the act to which this is a supplement, that the right, title, and interest of the owners, in and to the lands, leasehold, or other interest mentioned and described in the certificate in writing, required by the first section of said act, should vest in the company therein named, and without any further conveyance or assignment, and free and discharged from all right or claim of dower; and it shall be the duty of the recorder of deeds of the county in which said certificate is or shall be recorded, to enter the names of the parties signing said certificate, among the grantors, in the index of deeds and conveyances in his office.[29]

Title to Lands Held in Trust to Vest Free from Dower.

1256. It shall be deemed and taken to be the true intent and meaning of the act to which this is a further supplement, that in all cases where the legal title to the lands, leasehold, or other interests mentioned and described in the certificate in writing, required by the first section of said act, have been, are, or shall be held in the name of one or more persons, for

[26] Act of March 27, 1865, Sec. 10, P. L. 34.
[27] Act of March 30, 1860, Sec. 3, P. L. 380.
[28] Act of March 27, 1865, Sec. 4, P. L. 34.
[29] Act of March 27, 1865, Sec. 5, P. L. 34.

the benefit or in trust for himself or selves, or conjointly with others, the right, title, and interest of such person or persons in whose name the same were or are held, shall be deemed to vest in the company therein named, freed and discharged from all claim or right of dower, without any further conveyance or assignment, as fully as though the same had been or are held in joint tenancy, in fee simple, or by absolute ownership.[30]

Acquisition of Additional Land.

1257. It shall be lawful for any company, duly incorporated, under the provisions of an act to enable joint tenants, tenants in common, and adjoining owners of mineral lands in this Commonwealth, to manage and develop the same, approved April 21, 1854, and of the several supplements thereto, to acquire, hold, and convey, for the purposes therein mentioned, other real and personal estate than that described in its certificate of association: Provided, the land, so held, shall not exceed the quantity limited in said act, or the supplements thereto.[31]

Leaseholds.

1258. Whenever, by the terms of the act of incorporation, authority is given to any company to purchase lands for mining and selling coal, such authority shall be taken to include the leasing, or purchasing of leases, of lands, similarly situated, and for the same purposes: Provided, that the quantity of land, held on lease, shall be deemed and estimated as so much of the lands authorized to be purchased.[32]

Proceedings in Case of Death of Co-Tenant.

1259. When any number of persons, citizens of the United States, tenants in common of any real estate within this Commonwealth, shall be associated for the purpose of manufacturing iron from the raw material, and any of such tenants in common shall die, it shall be lawful for the survivors and the executors or administrators of such deceased co-tenant to join in making the application provided for in the act to which this is a supplement, and in the supplement thereto,

[30] Act of July 5, 1869, Sec. 1, P. L. 1278.
[31] Act of June 4, 1864, Sec. 1, P. L. 938.
[32] Act of September 30, 1864, Sec. 1, P. L. 961 (1865).

passed April 13, 1838, and to do all things necessary to carry the same into effect; and the same proceedings shall take place thereon as directed by the said act and its several supplements.[33]

Executors Authorized to Convey Interest of Decedent for Stock.

1260. The provisions of the act, entitled "A further supplement to the act to encourage the manufacture of iron with coke or mineral coal," et cetera, passed April 7, 1858, be and the same are hereby extended to all companies incorporated in pursuance of the act to encourage manufacturing operations within this Commonwealth, passed April 7, 1849, and the several supplements thereto, and of the act to enable joint tenants, tenants in common, and adjoining owners of mineral lands in this Commonwealth to manage and develop the same, passed April 21, 1854; and to all companies incorporated by or under any law of this Commonwealth for the improvement and development of any coal or mineral lands held by tenants in common thereof; and the executors or administrators of any deceased tenant in common of said lands may and they are hereby authorized to convey the undivided estate and interest of such decedent therein to such company, receiving therefor so much stock in such company as the said decedent would have been entitled to receive in his lifetime, to be held in the same manner as the lands: Provided, that no directions or limitations contained in any last will and testament of such decedent shall be in any manner interfered with: And provided, that before making such conveyance such executors or administrators shall give sufficient security, to be approved by the Orphans' Court having jurisdiction of their accounts, for the faithful application of the stock received therefor.[34]

Debts and Liabilities of Companies.

1261. In order the better to limit and restrict the amount of liabilities to the actual capital of all companies formed under the act to enable joint tenants, tenants in common, and adjoining owners of mineral lands in this Commonwealth, to manage and develop the same, approved April 21, 1854, and to provide for the protection of both the creditors and

[33] Act of April 7, 1858, Sec. 1, P. L. 213.
[34] Act of April 2, 1860, Sec. 1, P. L. 577.

stockholders thereof, the total amount of the debts and liabilities (other than its capital stock) of any such company shall never exceed the amount of its capital actually paid in; and if any debts or liabilities shall be contracted exceeding the said amount, the directors and officers contracting the same, or assenting thereto, shall be jointly and severally liable, in their individual capacities, for the whole amount of such excess, and the same may be recovered by action of debt, as in other cases.[35]

Liability of Stockholders.

1262. The stockholders of all such companies shall be jointly and severally liable, in their individual capacities, for all debts and contracts made by their respective companies, to the amount remaining unpaid on each share of stock held by them respectively, and shall be liable, in like manner, for all debts due to mechanics, workmen, and laborers employed by their company: Provided however, that no stockholder, director, or officer shall be held individually liable for any such debt as aforesaid, unless the same shall have been sued for within one year after the time at which it was contracted.[36]

Power to Borrow Money.

1263. It shall be lawful for any company, incorporated, or hereafter incorporated, under the provisions of the act to which this is a supplement, and the several supplements thereto, including this act, to borrow on loan, for the prosecution of their legitimate business, any sum or sums of money not exceeding the amount of capital stock paid in, or represented by the lands of the company, and issue bonds therefor, not less in amount than one hundred dollars each, at a rate of interest not exceeding 7 per centum per annum, and for securing the payment thereof, to execute a mortgage or mortgages of all or any part of their real estate and franchises, under the seal of the corporation, to be signed and acknowledged by the president or other chief officer thereof: Provided always, that the loan created shall first be approved by a majority of the stockholders, at a meeting convened to

[35] Act of March 30, 1860, Sec. 1, P. L. 380.
[36] Act of March 30, 1860, Sec. 2, P. L. 380.

consider the propriety of borrowing the proposed sum of money.[37]

Power to Sell Real Estate.

1264. The directors of any company, incorporated under the act to which this is a supplement, shall have the power to sell and convey any part or the whole of any real estate belonging to said company: Provided, that the consent of the holders of a majority of the stock, to said sale, shall be first obtained, at a meeting called for that purpose, in accordance with the by-laws: Provided further, that this section shall not apply to the Bird Coal & Iron Company.[38]

Application of Proceeds of Sale.

1265. The said stockholders may direct how the proceeds of such sale shall be applied, whether in whole, or in part, as working capital, or in reduction of capital stock [or] to any other corporate purpose, but no portion of such proceeds of sale shall be applied to the reduction of capital stock, or payment of dividends, until all the debts due by said company, at the time of said sale, shall have been first provided for, or paid; and before any reduction of said capital stock, as aforesaid, shall be carried into effect, the president and a majority of the directors of said company shall make and sign a certificate thereof, under oath or affirmation, and cause the same to be recorded in the office of the secretary of the Commonwealth, and filed with the auditor-general, and new certificates of the capital stock, so reduced, shall be thereupon issued.[39]

Power to Sell Bonds at Less Than Par (Luzerne County Excepted).

1266. Whenever any company, organized under the provisions of the act to which this is a supplement, and the several supplements thereto, shall determine to borrow, on loan, for the prosecution of its legitimate business, any sum, or sums, of money, which, by the supplement to said act, passed March 27, 1865, it is authorized so to do, and shall issue bonds, certificates of loan, or other evidence of indebt-

[37] Act of March 27, 1865, Sec. 1, P. L. 37.
[38] Act of March 27, 1865, Sec. 1, P. L. 34.
[39] Act of March 27, 1865, Sec. 2, P. L. 34.

edness, secured by mortgage, for payment thereof, such company is hereby authorized to sell the same, at less than their par value; and any company which may have issued, or shall hereafter issue, any such bonds, certificates of loan, or other evidence of indebtedness, executed by such company, and has disposed of, or may hereafter dispose of, the same at less than their par value, such transaction shall not be deemed usurious, or in violation of any law of this Commonwealth prohibiting the taking of more than 6 per cent. interest: Provided, that the consent of a majority of the stockholders shall be obtained thereto, before the sale of the bonds: Provided, that the provisions of this act shall not apply to the county of Luzerne.[40]

Power to Mortgage.

1267. All iron and other manufacturing and mining corporations incorporated under the laws of this Commonwealth shall be and are hereby enabled to borrow moneys, and to secure the loans, to be made to them, by mortgage of their property, and to dispose of their bonds, or certificates of loan, or pay interest thereon at such rates as railroad and canal companies may now do.[41]

Companies Authorized to Consolidate.

1268. The provisions of the act, entitled "An act relating to railroad companies," passed May 16, 1861, and the supplement thereto, entitled "A further supplement to an act entitled 'An act relating to railroad companies,'" passed May 16, 1861, which supplement was approved March 23, 1865, be and the same are hereby extended to oil and other mining companies.[42]

Name of Consolidated Company.

1269. Any two or more oil or other mining companies which shall, according to the provisions of said recited acts, agree to merge or consolidate their rights and privileges, granted to them under the laws of this Commonwealth, are hereby authorized to assume such name as the board of directors, selected by the joint action of said companies, may

[40] Act of April 20, 1866, Sec. 1, P. L. 113.
[41] Act of January 11, 1867, Sec. 1, P. L. 1372.
[42] Act of April 18, 1867, Sec. 1, P. L. 90.

designate, and also to fix the amount of the capital stock of said company, after the consolidation, and designate the time and places of meeting of the board of directors: Provided, that immediately after said consolidation shall have been effected, it shall be the duty of said company to certify to the secretary of the Commonwealth, the name of said company, and the amount of its capital stock.[43]

Duties of President and Directors.

1270. It shall be lawful for the president and directors, or a majority thereof, of any oil, or other mining company, agreeing, or desirous of accepting the provisions of this act, to make such merger, and consolidate, in manner and form as hereinbefore provided.[44]

[43] Act of April 18, 1867, Sec. 2, P. L. 90.
[44] Act of April 18, 1867, Sec. 3, P. L. 90.

CHAPTER LXXXV.

CANAL COMPANIES.

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Incorporation.

1271. The provisions of the fifth section of the act, entitled "An act regulating railroad companies," approved February 19, 1849, are hereby extended to any coal, canal, or navigation company incorporated under the laws of this Commonwealth, of which the stockholders, in general meeting to be convened according to the provisions of the existing charter thereof, shall, by a majority of the votes cast in the manner and under the rules prescribed by the said charter, accept the provisions of this act: Provided, that within sixty days after such acceptance a certified copy of the same, under the seal of such company, shall be forwarded to the governor of this Commonwealth, to be filed in the office of the secretary of the Commonwealth.[1]

Upon the acceptance of the provisions of this act by the stockholders of such company, in the manner provided in the first section of this act, so much of any former acts relating to such company as will be supplied by this act is hereby repealed.[2]

Elections.

1272. It shall be the duty of any and every railroad or canal company incorporated by this Commonwealth, whose works and property are principally located within this State, in all elections for president, managers, directors, or other

[1] Act of April 20, 1858, Sec. 1, P. L. 356.
[2] Act of April 20, 1858, Sec. 2, P. L. 356.

officers of said companies having the control and direction of the works or affairs of such company, held at any time after the passage of this act, to hold their elections at some place to be determined upon by the board of managers, in this State, and to elect a majority of citizens, resident within this State, as managers or directors of their said companies respectively, of which majority the president shall in all cases be one; and it shall be the duty of the respective boards of such corporations so elected to establish their principal office for the transaction of their corporate business in some convenient place within this State, and not elsewhere, within one month after their election aforesaid; and any election not made in conformity to the directions of this act shall be void.[3]

Failure to Elect Officers.

1273. Upon the failure of any company, incorporated and situated as aforesaid, to elect officers in accordance with the provisions of this act, and to establish their office as herein directed, it shall be the duty of the governor to nominate to the canal commissioners seven persons, stockholders of such company, resident within the State, fitted to conduct the affairs of the said company failing as aforesaid; and if the said commissioners shall approve of the persons so named they shall confirm their appointment as directors of such company; and if any of the persons so nominated shall not be approved by the said commissioners, others shall be nominated in such case by the governor aforesaid, till the required number shall be approved; and the like course shall be pursued, if any stockholder so appointed shall refuse to serve; in such case a proper person, not a stockholder, may be nominated and appointed as aforesaid in his place; and when the number is complete as aforesaid, the directors so appointed shall elect one of their number president of the board, and shall also elect a treasurer of the said company; and it shall be the duty of the directors aforesaid to take charge of the works and property, books, papers, and documents of the said company, and conduct the business thereof, under the provisions, regulations, and directions of the charter thereof, and with the same liabilities, duties, and responsibilities, as a board regularly elected under the provisions of the charter would be liable to do, and with like powers and

[3] Act of March 13, 1847, Sec. 1, P. L. 333.

authorities; and the said directors shall continue to hold possession of the works of said company, and to execute their duties as aforesaid, until a board shall be regularly elected by the company, in accordance with the provisions of this act; and upon such election the said directors appointed as aforesaid, in charge of the works as aforesaid, shall deliver up to the said board elected as aforesaid, within one month after they shall by resolution have determined to comply with the requirements of this act, a copy of which resolution shall be delivered to the directors aforesaid, all and singular the works, property, books, papers, and documents of the said company, or having any connection therewith, and all funds not necessarily expended in the discharge of the expenses incident to the conducting of the affairs of the said company, and in payment of its liabilities: Provided, that the person who shall act as treasurer of such company shall give bond, with security, to be approved by the Court of Common Pleas of the county in which the works of the company shall be principally situated, in such sum as the said court shall direct; and shall keep books, in which the whole receipts and disbursements of the company shall be fully set forth and exhibited.[4]

Meetings.

1274. It shall be lawful for any of such canal companies to alter the time of their respective annual meetings of stockholders to the second Tuesday in February of each year.[5]

Traffic Contracts.

1275. It shall and may be lawful for any canal company incorporated by this Commonwealth, to enter into any contract or contracts with any other canal or railroad company, with reference to the traffic to be carried on by their respective works, the proportion thereof, the rates to be paid therefor, and for paying a proportion of the expenses of operating any railroads, transporting freight, using either of the improvements; and all contracts heretofore made with respect to the matters aforesaid are validated and confirmed: Provided however, that nothing herein contained shall authorize either of the parties to said contract to make higher or

[4] Act of March 13, 1847, Sec. 2, P. L. 333.
[5] Act of April 2, 1868, Sec. 5, P. L. 35.

greater charges than are now allowed by law; nor to affect in any way the right of companies, individuals, and the public, to use the respective works, and to pursue without interference their lawful employment on the same respectively, under existing laws.[6]

It shall and may be lawful for any canal company or companies, created by or existing under the laws of this Commonwealth, from time to time, to enter into any contract or contracts with any other canal company or companies chartered by, or of which the canal or canals is or are authorized to extend into this Commonwealth, for the purpose of enlarging and improving their said canal or canals, and for the interchange of traffic, upon such terms and conditions as may be agreed upon with the company or companies owning the same, and to use and operate such canals in accordance with such contract, and to purchase and hold the stock and bonds of either of such companies: Provided, that the canals of the companies so contracting shall be either directly, or by means of intervening canals, connected with each other; and all acts and parts of acts inconsistent with this act are hereby repealed, and all such contracts now existing are hereby ratified.[7]

Power to Purchase Securities of Other Companies.

1276. It shall be lawful for any canal or navigation company, incorporated by this Commonwealth, to purchase and hold the stocks and bonds, and to lease the road and property of, or become consolidated and merged with, any railroad company so incorporated, and for any such railroad company to purchase and hold the stock and bonds, and to lease the canal, navigation and property of, or become consolidated and merged with any such canal or navigation company, in the same manner as such purchases, leases, consolidation, and merger are now allowed by law by and between railroad companies; and all the provisions of existing acts relative to such purchases, leases, consolidation, and merger by and between railroad companies are, whenever applicable, hereby extended so as to embrace the purchases, leases, consolidation, and merger hereby authorized.[8]

[6] Act of April 11, 1864, Sec. 1, P. L. 393.
[7] Act of April 11, 1868, Sec. 1, P. L. 82.
[8] Act of April 14, 1870, Sec. 1, P. L. 75.

Power to Consolidate.

1277. It shall be lawful for any canal company created by and existing under the laws of this Commonwealth, to exercise all the powers as to the stock, bonds, and lines of canal of other canal companies, and also as to merger or consolidation with other canal companies, which railroad companies are authorized to exercise as to the stock, bonds, and railroads of other railroad companies, and as to merger or consolidation with other railroad companies, by the act approved April 23, A. D. 1861, entitled "An act relating to certain corporations," and by the act passed May 16, A. D. 1861, entitled "An act relating to railroad companies," and by the several supplements to the said acts respectively, all the privileges and provisions of which said several acts and supplements are hereby extended to canal companies whenever applicable.[9]

Leases by Canal Companies.

1278. The authority conferred upon railroad companies by the act approved February 17, 1870, entitled "An act to authorize railroad companies to lease or become lessees, and to make contracts with other railroad companies, corporations, and parties," shall extend to embrace leases, assignments of lease, or other contracts relating to canal and other navigation works, situated either in this or any other State: Provided, that neither the provisions of the said act, approved February 17, 187[0], nor of this act, shall authorize the leasing or merging of, or entering into contracts with the Susquehanna Canal Company, or the purchase in whole or in part, of the said canal, its capital stock, loans, or securities, by any railroad company.[10]

No sale or lease of any of said canals shall be made to any parties, nor shall a controlling interest in the stock or bonds of any of said companies be purchased by any corporation other than one or more of the canal companies whose works connect with the canal of such selling or leasing corporation, either directly or by means of intervening canals, unless a passage for boats and cargoes over the canal so sold or leased, at rates of toll, freight, and charges not exceeding those that

[9] Act of April 2, 1868, Sec. 1, P. L. 53.
[10] Act of May 3, 1871, Sec. 1, P. L. 248.

may from time to time be charged upon the canal adjacent to such sold or leased canals, shall be guaranteed and secured forever by the contract of the purchaser or lessee, to each and all of the several canals which connect mediately or immediately with the canals so leased, sold, or disposed of.[11]

Power to Purchase and Lease Boats and Motive Power.

1279. Said canal companies, and each of them, are hereby authorized to purchase, construct, use, sell, insure, and lease boats and motive power, and to transport freight, and to apply and use any and all other device or devices which are or may be utilized, applied, or adapted to internal navigation and transportation, upon such terms and conditions as they from time to time determine upon.[12]

Eminent Domain.

1280. All incorporated canal and navigation companies shall have the same rights to obtain lands and materials for the repair, enlargement, or improvement of their works as are conferred upon railroad companies, for the purposes therein named, by the tenth and eleventh sections of the Act of February 19, 1849, entitled "An act regulating railroad companies;" the said navigation and canal companies paying for the said land and materials as provided for in said act: Provided, that this section shall not authorize any canal or navigation company to occupy any street or alley not now occupied in any incorporated city or borough in this Commonwealth.[13]

Power to Improve Canals.

1281. All such canal companies, or either of them, are hereby authorized to enlarge, extend, deepen, and improve by new work, where needful, their respective canals and appurtenances, and when necessary for that purpose, to suspend navigation thereon, during one season, or parts of two seasons, together equivalent to one season, and to purchase or lease all or any part thereof from, and sell or lease all or any part thereof to, either of the others; and whenever and as often as deemed necessary by their respective directors to

[11] Act of April 2, 1868, Sec. 4, P. L. 53.
[12] Act of April 2, 1868, Sec. 2, P. L. 53.
[13] Act of May 5, 1855, Sec. 1, P. L. 450.

enable them to carry out the provisions, or any of them, of this and the preceding section, or either of them, of this act, such corporations shall have the power to issue preferred or other stock, or to borrow money from time to time, and issue their bonds therefor in sums of not less than one hundred dollars each, in such form or forms, and bearing such rate of interest, as may be determined upon by the directors, and secure the same by one or [more] mortgages upon their corporate property, rights, and franchises, or to use for any said purposes any bonds heretofore authorized to be issued and secured by any of said companies.[14]

Right to Deepen and Improve Certain Canals.

1282. The act approved April 14, 1870, entitled "A supplement to an act, entitled 'An act relating to railroad and canal companies,' approved April 11, 1864," shall not operate or be deemed to repeal or affect the provisions contained in the fourth section of the act, approved April 2, 1868, entitled "An act extending to canal companies the privileges heretofore conferred on railroad companies, and to authorize them to deepen, improve their canals, and provide improved facilities for transporting property," so far as relates to the canals situate on the Susquehanna river and its tributaries, and canals connected directly therewith, and that the said fourth section shall to that extent, and to said canals, be and continue in full force and effect.[15]

Lateral Canals.

1283. All the provisions of the Act of May 5, 1832, entitled "An act regulating lateral railroads," and the supplements thereto, are hereby extended to the construction of canals, not exceeding in width the canals of this Commonwealth: Provided, that no canal constructed under the authority of this act shall drain the water from any canal or pool with which the same may be connected; and all such canals shall be constructed as not to permit the water conveyed into the same to be lost or wasted by leakage or drainage.[16]

It shall be lawful for any canal company, now or hereafter incorporated by or under the laws of this Commonwealth,

[14] Act of April 2, 1868, Sec. 2, P. L. 53.
[15] Act of April 17, 1871, Sec. 1, P. L. 239.
[16] Act of May 5, 1841, Sec. 13, P. L. 247.

to construct and operate lateral railroads and branches therefrom, not exceeding respectively ten miles in length, with the necessary appurtenances, from suitable points on the line of their canals to any mines, quarries, or other desirable points, for the procurement of traffic for said canals; and shall have and enjoy, and be subject to all and singular the provisions and restrictions of an Act of Assembly regulating railroad companies, approved February 19, 1849, and the supplements thereto, necessary for the location, construction, and operation of the said roads and branches.[17]

Bridges Over Canals.

1284. The provisions of the laws of this Commonwealth relative to the erection of bridges over rivers, creeks, or rivulets, be and the same are hereby extended to the erection of bridges over canals and railroads: Provided, that bridges erected under the provisions of this act shall not obstruct any canal or railroad over which such bridge may be erected: And provided further, that nothing in this act shall release railroad or other companies, or the Commonwealth from the requirements of existing laws.[18]

Wharves Upon Canals.

1285. The canal commissioners be and they are hereby empowered to authorize the owner or owners of lands along the berme-bank of any of the canals belonging to this Commonwealth, to construct wharves on his or their own premises on the said berme-bank; and to grant to such owner or owners the privilege of using and occupying the said wharves, in loading and unloading goods, wares, merchandise, coal, lumber, or other freight; subject, however, to such regulations and restrictions as the said canal commissioners may deem expedient and proper: Provided, that the same shall not, in any manner, interfere with the free navigation of said canals.[19]

Purchasers of State Canals to Keep Them in Repair.

1286. It is the true intent and meaning of the fifth section of the act, entitled "An act for the sale of the main line of the

[17] Act of March 26, 1870, Sec. 1, P. L. 75.
[18] Act of April 12, 1855, Sec. 1, P. L. 220.
[19] Act of April 9, 1856, Sec. 1, P. L. 292.

public works," approved May 16, 1857, and the Commonwealth, by said section, does require the purchasers of the main line to keep the canals, referred to in said section, in a condition of repair and fitness for use, which shall, at all times, during seasons of navigation, be equal to, and not inferior to, the condition of repair and fitness for use, in which the same were, at the time the Commonwealth delivered the same into the purchasers' possession.[20]

Sale of Canals.

1287. All the provisions of the act, entitled "An act concerning the sale of railroads, canals, turnpikes, bridges, and plank roads," approved April 8, 1861, be and the same are hereby extended to slack water, or lock navigation companies in this Commonwealth; and all sales of the corporate property and franchises of such companies, heretofore made, since the passage of said act, under and by virtue of any process or decree of any court of this State, if otherwise regular, shall be as valid and effectual as if such companies had been named in said original act.[21]

Penalty for Using Towing-Paths or Berme-Banks, Except for Towing Boats, Etc.

1288. Every person who shall willfully lead or drive any horse, ox, ass, mule, sheep, swine, or other cattle, upon the towing-path or berme-bank of any canal or pool forming part of an artificial navigation, constructed under the laws of the Commonwealth of Pennsylvania, except for the purpose of towing boats, craft, or other floating things, upon the waters of such artificial navigation, or for the purpose of conveying articles to and from the margins of such canals or pools, to be transported thereon or delivered at their place of destination, shall forfeit and pay for each offense any fine not exceeding the sum of ten dollars, and pay all damages consequent upon such offense over and above the said forfeiture, and in case of default in the immediate payment of such forfeiture after conviction, such persons shall be sentenced to imprisonment in the jail of the county where such offense may be committed, for a term not exceeding thirty

[20] Act of May 3, 1864, Sec. 1, P. L. 725.

[21] Act of April 17, 1866, Sec. 1, P. L. 112. This act was amended by Act of May 25, 1878, P. L. 145.

days at the discretion and upon the warrant of the court before whom such conviction shall be had: Provided, that this section shall have no effect, unless the company prosecuting shall have complied with the provisions of its charter in constructing passable bridges or fordings for the accommodation of the public and those concerned.[22]

Authority to Enter Upon Lands for Materials to Repair Canals, Etc.

1289. For the speedy reparation of any injury to any of the canals, dams, or the works connected therewith, forming part of an artificial navigation as aforesaid, whenever and as often as such case shall happen, it shall be lawful for any engineer, superintendent, gatekeeper, or other agent, employed upon the said canals and navigation, with carts, wagons, or other carriages, with beasts of draft or burthen, and all necessary tools and implements, to enter upon any lands contiguous to the said canals, pools, dams, or the works connected therewith, and to dig for, get, and carry away and use all such stone, gravel, clay, and other materials as may be necessary and proper in their opinion, for such reparation, doing as little damage thereby as the nature of the case will permit, and making amends for the damages that may be done thereon, and paying for the materials taken away, the amount whereof, if the parties cannot agree, shall be assessed, valued, and recovered, in the manner provided by the act constituting the company, or authorizing the construction of such artificial navigation by which the said materials as aforesaid may be removed or taken away for the purpose of constructing such works.[23]

Penalty for Obstructing Free Use of Canals or Pools.

1290. If any boat, craft, or floating thing shall be so moored or placed in any canal or pool forming part of an artificial navigation as aforesaid, as to obstruct the free use of such

[22] Act of April 10, 1826, Sec. 1, P. L. 198. An owner of land cannot claim as an element of damages that the construction of a railroad has cut off his access to a canal for the purpose of watering his stock, inasmuch as the taking of cattle upon the bank of a canal for the purpose of watering is an offense punishable by fine and imprisonment: Philadelphia & Reading R. R. *v.* R. & P. R. R., 12 Pa. C. C. R. 513 (1892).

[23] Act of April 10, 1826, Sec. 2, P. L. 198.

canal or pool, or if any person or persons shall obstruct or prevent the use thereof, by means of the loading, unloading, misplacing, or otherwise misconducting any such boat, craft, or other floating thing, and shall not forthwith, upon being requested thereto, by any engineer, superintendent, gatekeeper, or other agent, employed upon the said canals and navigation, or by any person incommoded by such obstruction, remove the same, the person who may cause such obstruction shall forfeit for every such offense any sum not exceeding twenty dollars over and above the expense of removing such obstructions.[24]

Penalty for Willfully Obstructing Navigation of Canals or Pools.

1291. If any person shall willfully obstruct the navigation of any of the said canals or pools by throwing into the same or sinking to the bottom thereof any vessel, timber, stone, earth, or other thing, or by placing anything whatever upon any of the towing-paths or berme-banks, such person shall forfeit for every such offense any sum not exceeding fifty dollars, and in case such forfeiture shall not be paid forthwith, shall be imprisoned as is directed in the first section of this act.[25]

Penalty for Injuring Works.

1292. If any person or persons shall willfully and maliciously break, throw down, or destroy the whole or any part of any lock, bank, wastewier, dam, aqueduct, culvert, bridge, feeder, guard wall, towing-path, or berme-bank belonging to any artificial navigation constructed as aforesaid, or stop up or obstruct any such feeder, wasteweir, aqueduct, or culvert, such person or persons shall, for every such offense, pay all the damages arising from such breakage, throwing down, stopping, or destroying, and on conviction thereof before the Court of Quarter Sessions, or any Court of Oyer and Terminer of the proper county, shall be sentenced to imprisonment at hard labor, for any term not exceeding three years, in the jail of the proper county, at the discretion of the court before whom the conviction may be had.[26]

[24] Act of April 10, 1826, Sec. 3, P. L. 198.
[25] Act of April 10, 1826, Sec. 4, P. L. 198.
[26] Act of April 10, 1826, Sec. 5, P. L. 198.

Penalty for Wantonly Opening or Shutting Any Lock or Safety Gate, Etc.

1293. If any person shall wantonly open or shut, or cause to be opened or shut, any lock or safety gate, or any wicket, paddle, or culvert gate, or any waste feeder or sluice gate, or drive any nails, spikes, pins, or wedges, into any such gate or fixtures thereof, or shall take any other means to prevent the perfect and free use of the same, or shall wantonly or maliciously break, throw down, or destroy any fence, wall, or timber work on any of the said canals or pools, feeders, or other parts of any artificial navigation constructed as aforesaid, such person or persons shall, for every offense, forfeit any sum not exceeding one hundred dollars, and be imprisoned in the jail of the county where such offense may be committed, upon the warrant of the court before whom a conviction shall be had, for a term not exceeding three calendar months.[27]

Manner of Passing Boats, When Meeting on Artificial Navigation.

1294. In all cases when any boat, craft, or other floating thing, in passing upon any artificial navigation constructed as aforesaid, shall meet with any other boat, craft, or floating thing, it shall be the duty of the boatmen, or other persons having charge of each of the said boats, craft, or floating thing, to turn out to the right hand so far as to give each other a free passage; and in all cases when any boat, craft, or floating thing shall approach any place upon any such artificial navigation as before mentioned, which shall be less than thirty feet wide at the top water line, or which shall not permit their passing, it shall be the duty of the boatmen, or other person having charge of the ascending boat, craft, or other floating thing, to wait at such distance from such narrow place as may be most convenient to permit the descending boat, craft, or other floating thing, to pass through such narrow place until such passage is effected; and every person violating any of the provisions of this section shall forfeit for each offense any sum not exceeding twenty dollars.[28]

[27] Act of April 10, 1826, Sec. 6, P. L. 198.

[28] Act of April 10, 1826, Sec. 7, P. L. 198.

When two boats must pass in a narrow place in a canal, it is the duty

Rate at Which Boats, Etc., may Move Upon Canals.

1295. No boat, craft, or other floating thing shall move upon any canal forming part of an artificial navigation constructed as aforesaid, faster than at the rate of four miles per hour, unless by express permission of the directors, managers, or commissioners of such navigation, to be contained either in a written license, or in a general printed regulation duly made and published by such directors, managers, or commissioners; and in all cases when one boat or other floating thing, moving upon any artificial navigation constructed as aforesaid, shall overtake any other boat or floating thing moving at a rate of speed slower than that of the boat or floating thing so overtaken, it shall be the duty of the boatman or person having charge of the slower boat or thing, to give every practicable facility to enable the overtaking boat, or other thing, to pass, and for that purpose to make room for the passage between such slower boat, or thing, and the towing-path, and if necessary to stop until the passage shall be fully effected; and every boatman, or other person who shall offend against any part of this section, shall forfeit for every such offense any sum not exceeding twenty dollars.[29]

No Buildings or Wharves to be Constructed for the Purpose of Taking Water, Without Permission.

1296. No person shall construct any building, wharf, basin, or watering place, or make and apply any device whatsoever for the purpose of taking water from any canal or feeders, reservoir, dam, or pool belonging to or forming part of any artificial navigation constructed as aforesaid, without first obtaining permission therefor from the directors, managers, or commissioners of such navigation in writing; and if any person shall offend against this section by commencing or making any such obstruction, or apply such device without such permission, or shall not conform to the direction of such directors, managers, or commissioners in respect to the loca-

of the ascending boat to wait; but if a third boat is moored to the bank in a proper manner, and the ascending boat does not wait, it is the duty of the descending boat to wait until a passing is effected; if it fail to do so, and the third boat is injured, the descending boat is liable: Sheerer *v.* Kissinger, 1 Pa. 44 (1845).

[29] Act of April 10, 1826, Sec. 8, P. L. 198.

tion and size of such building, wharf, basin, watering place, or device as aforesaid, such person shall, for every such offense, forfeit a sum not exceeding one thousand dollars, and the directors, managers, or commissioners aforesaid, their agents or servants, shall be authorized, at the expense of the person thus attempting, to remove and destroy every such building, wharf, basin, watering place, or device as aforesaid.[30]

Proceedings, When Discharged Agent Refuses to Deliver Up Property, Etc.

1297. If any agent, toll collector, lock-keeper, superintendent, or other person employed upon any part of an artificial navigation, constructed as aforesaid and occupying any house, office, building, or land belonging thereto, shall be discharged from his employment by the managers thereof, or any one duly authorized by them, and shall not deliver up the possession of such house, office, building, or lands, together with all the books, papers, and other matters and things belonging to such artificial navigation within seven days next after such discharge shall be given to him, or left at such house, office, or building; or if the wife or family of any such agent, toll collector, lock-keeper, superintendent, or other person, who shall die in either of the said employments, shall refuse to deliver up the possession of such house, office, building, lands, or appurtenances, together with the books, papers, and other matters and things belonging to any navigation aforesaid, in his, her, or their custody, possession or power, within three months after another person shall have been appointed in the place or stead of the person so dying, then, and in either of those cases, it shall be lawful for any justice of the peace of the county where such house, office, building, or lands are situate, and he hereby is required, on affidavit being made before him, setting forth particularly the grievance complained of, and the property retained, by warrant under his hand and seal, to order any constable or other peace officer, with such assistants as may be necessary to enter such house, office, building, or upon such land, in the daytime and remove the persons who shall be found therein, together with the goods and chattels, out of such house, office, or building, and from off such land, and take possession of all

[30] Act of April 10, 1826, Sec. 9, P. L. 198.

the books, papers, matters, and things enumerated in such warrant, belonging to the said navigation, and to deliver possession of the same to the new appointed agent, toll collector, lock-keeper, superintendent, or other person employed to receive the same.[31]

No Boat to Pass Locks Without Having Name Marked Thereon.

1298. No boat or vessel of any description shall be permitted to pass through any lock, upon any of the said canals, or artificial navigation aforesaid, unless such boats have painted, in letters not less than two inches in length, near the head of the stern thereof, and above the water when full laden, the name of such boat or vessel, and the place where the same is owned, and every person who shall attempt to pass any boat or vessel through any lock, or shall introduce any boat or vessel not named as aforesaid, into any of the said canals, in violation of this section, after the first day of January, 1828, shall forfeit for every such offense any sum not exceeding five dollars.[32]

Penalty for Using Setting Poles or Shafts Pointed With Iron.

1299. No person navigating any of the said canals or locks shall be permitted to use therein any setting pole or shaft pointed with iron or other metal; and if any person shall offend against this section he shall, for every such offense, forfeit any sum not exceeding five dollars.[33]

Property Found on Canals may be Seized and Sold.

1300. It shall and may be lawful for the directors, managers, or commissioners of any such artificial navigation aforesaid, their engineers, superintendents, officers, or agents, to seize any property which shall be found upon the banks or in the waters of any canal forming part of such navigation, or in the channels of any pool or on the towing-path thereof, which is apparently abandoned by the owner, and after due and public notice to sell the same at auction, and pay the money received therefor, after deducting the expenses of seizures and sale, to the owners of the property seized, if the money shall be claimed within one year, but if not, to the

[31] Act of April 10, 1826, Sec. 10, P. L. 198.
[32] Act of April 10, 1826, Sec. 11, P. L. 198.
[33] Act of April 10, 1826, Sec. 12, P. L. 198.

supervisors of the highways of the townships where the seizure shall be made.[34]

How Boats, Craft, Etc., Shall be Moored.

1301. All boats, craft, and floating things left at wharves or other places in the line of any of the said canals or artificial navigation, shall be moored at both ends, on the side opposite to the tow-paths, and any boatman or other person offending herein shall forfeit and pay any sum not exceeding twenty dollars, and any officer or agent having charge of any part of such canals or navigation shall be and hereby is authorized to remove any boat, craft, or other floating thing otherwise moored than is herein directed at the expense and risk of the owner thereof.[35]

Recovery of Penalties and Forfeitures.

1302. All penalties and forfeitures created by this act, the recovery of which is not herein otherwise specially provided for, may be sued for and recovered with costs before any justice of the peace, in any county where such penalty or forfeiture may accrue, and where the penalty does not exceed one hundred dollars, in the name of the corporation owning the canal, or in the name of any other artificial navigation upon which the offense may be committed; and any engineer, superintendent, or collector of tolls duly appointed by the managers of such corporation, who are hereby authorized to sue for and recover the same, or by summary conviction before such justice of the peace, who shall have power in all cases, where by this act the penalties and forfeitures are made discretionary, to fix the amount thereof, and the amount of such penalties and forfeitures when recovered shall be paid over to the supervisors of the highways of the townships wherein the same shall be incurred, but nothing herein shall be deemed or taken to render any such supervisor, or any inhabitant of the said township, incompetent, from interest, to be a witness, without regard to any appropriation of penalties or forfeitures made in any part of this act: Provided, that if any person or persons shall conceive himself or themselves aggrieved by the judgment of a justice of the peace,

[34] Act of April 10, 1826, Sec. 13, P. L. 198.
[35] Act of April 10, 1826, Sec. 14, P. L. 198.

he or they may appeal by petition to the next Court of Quarter Sessions, who shall take such order thereon as to them shall appear just and reasonable, and the same shall be conclusive: And provided further, that in all cases where the corporation owning the canal or other artificial navigation are adjudged to pay costs, the same may be collected by attachment, against all or any of the officers of the said company.[36]

Penalty for Injury to Property Adjoining Towing-Path.

1303. Any master of a boat, or any of his crew, any agent of a boat, rider of a horse or other animal connected therewith, any passenger therein, or any other individual on foot or otherwise using said towing-path, who shall purloin, break, or injure any fence or wall that shall have been erected along the said towing-path, or if no fence or wall be placed there, shall trespass on the property adjoining said towing-path, or in anywise injure, occupy, walk, or ride over the same, he or she so offending shall be liable to the penalties provided in the first section of this act.[37]

Extension of Preceding Act.

1304. Each and all the provisions and penalties contained in the act passed the tenth day of April, 1826, entitled "An act to protect the public in the full benefit and enjoyment of the works constructed for the purposes of inland navigation," shall be applicable to, and in full force and effect, so far as respects all works which have been or may hereafter be constructed under the laws of this Commonwealth, for the purposes of inland navigation.[38]

Boats to be Weighed for Purpose of Collecting Tolls.

1305. For the purpose of ascertaining the weights of boats and their cargoes, navigating any canal or artificial navigation of any company incorporated by the laws of this Commonwealth upon which tolls are by law chargeable, every such boat shall be required to enter a weigh-lock, or such other device as may be convenient for the purpose, to be weighed (if any such weigh-lock or other device shall be constructed at

[36] Act of April 10, 1826, Sec. 15. P. L. 198.
[37] Act of April 10, 1826, Sec. 16. P. L. 198.
[38] Act of February 12, 1827, Sec. 1, P. L. 34.

or near to the place of her departure), and shall not be entitled to a permit, nor be allowed to depart, until she shall have so been weighed; and if there be no such weigh-lock at the place of her departure, she shall be required to enter the first weigh-lock she may come to in the course of her passage, and in case of refusal or neglect to do so, shall not be allowed to proceed further; and in such weigh-locks they shall be weighed, and the weights of their cargoes ascertained, for the purpose of fixing the tolls to be charged thereon, which shall be specified in their permits or certificates accordingly; and every such boat shall also, upon arriving near to its place of destination, and before passing the last lock, if so required and there be a weigh-lock or other device as aforesaid, at or near to the same, enter such weigh-lock or other device, and be weighed for the purpose of ascertaining whether the cargo has been increased; and if it shall appear to have been increased, toll shall be charged upon the excess for the whole distance (or for the additional number of locks or the amount of lockage said boat shall have passed through or overcome, as tolls are respectively chargeable) the boat shall have been navigated, in like manner as if the whole cargo had been on board from the beginning, and shall not be allowed to pass further until such toll be paid: Provided, that if the master or owner of a boat taking in any additional cargo, or having unloaded any part thereof, shall at the first lock at which he shall arrive, after such addition or diminution, give to the lock-keeper an account thereof, the same shall be certified by the lock-keeper, and if upon arriving at a weigh-lock the same account so certified shall be found to be correct, then the toll charged or deducted upon such addition or diminution shall only be for the number of locks it shall have passed through, or may pass through, to its place of destination.[39]

Referees to be Appointed in Case of Dispute.

1306. In case of dispute or disagreement between any owner or master of a boat and the keeper of a weigh-lock, about the accuracy of the adjustment of a weigh-lock, or the accuracy of the result of the weighing, such dispute or disagreement shall be referred to two citizens residing in the neighborhood, one to be chosen by each party, with power, if they cannot agree, to choose a third, who shall proceed

[39] Act of March 19, 1830, Sec. 1, P. L. 118.

forthwith to make the necessary examination, and the report of any two of them shall be final and conclusive as to the weight of the cargo, which shall thereupon be certified accordingly by the lock-keeper.[40]

Empty Boats may be Re-Weighed.

1307. It shall be the right and privilege of the owner of the cargo of any boat on any canal in this Commonwealth, if dissatisfied with the weight of the cargo, or empty boat, as decided by the weighmaster of such canal, to have it re-weighed when and where the same may be required by such owner; and in order to ascertain the true weight of the empty boat, it shall pass upon the scale in the same state and with the same boat furniture, fixtures, and appendages as when weighed with the cargo on board.[41]

Guard to be Placed Between Stem Post and Rudder.

1308. All and every boat navigating upon any canal, pool, or other artificial navigation of any company incorporated as aforesaid, shall have a guard or plate of iron attached to the keel, and extending under the rudder in such manner and to such distance as to cover the opening between the stem post and rudder, and effectually prevent the line of any other boat from entering the same opening; and every master or owner of a boat navigated as aforesaid, without such guard, shall for each and every offense forfeit and pay the sum of twenty dollars, and moreover shall be liable for all damages occasioned by the want thereof.[42]

Lights to be Carried at Night.

1309. Every boat, craft, or other floating thing navigated upon any canal, pool, or other artificial navigation of any company incorporated as aforesaid, at night, shall carry a conspicuous light in the bow thereof, and every master or owner of a boat, or other floating thing so navigated at night, without a light in the bow, shall forfeit and pay the sum of five dollars for each and every offense, and shall moreover be liable for all damages occasioned by the want thereof.[43]

[40] Act of March 19, 1830, Sec. 2, P. L. 118.
[41] Act of April 16, 1838, Sec. 41, P. L. 626.
[42] Act of March 19, 1830, Sec. 3, P. L. 118.
[43] Act of March 19, 1830, Sec. 4, P. L. 118.

Boats Not to be Moored Within Twenty Rods of Lock.

1310. No boat, craft, or other floating thing shall unnecessarily stop, lie by, or be moored within twenty rods of any lock, except in a basin, and every master or owner of any boat or other floating thing, who shall violate this regulation, shall forfeit and pay the sum of five dollars.[44]

Penalty for Delay in Entering and Leaving Lock.

1311. Every master or person having charge of any boat, craft, or other floating thing, who shall be guilty of any unreasonable or unnecessary delay in entering or leaving a lock, shall for each and every offense forfeit and pay the sum of five dollars.[45]

Boats to be Moored Near Breaches, as Requested.

1312. In case of breach or other obstruction in any canal or other artificial navigation of any company incorporated as aforesaid, the superintendent or other person having charge of the work at the time, shall direct the boats and other floating things which may be collected near such breach or other obstruction, to lie in such places, and to be moved backward or forward, as he may think fit or proper, and every owner, master, or other person having charge of a boat or other floating thing, who shall refuse or neglect promptly to comply with his directions, shall for each and every offense forfeit and pay the sum of five dollars.[46]

Permit to be Exhibited at Each Lock.

1313. The owner, master, or navigator of each and every boat, or other floating thing, navigating upon a canal, pool, or other artificial navigation of any company incorporated as aforesaid, shall be and hereby is required to exhibit his permit at each and every weigh-lock or other lock, and at every collector's office, and to surender the same at the last lock the said boat or other floating thing may arrive at before reaching the place it is permitted to proceed to, and every person who shall refuse or neglect to exhibit and to surrender

[44] Act of March 19, 1830, Sec. 5, P. L. 118.
[45] Act of March 19, 1830, Sec. 6, P. L. 118.
[46] Act of March 19, 1830, Sec. 7, P. L. 118.

the permit as aforesaid, shall for each and every offense forfeit and pay the sum of ten dollars.[47]

Loss of Preference.

1314. Every boat or other floating thing, which shall arrive at any lock, and which shall not improve the first opportunity of passing the same, shall lose its preference.[48]

Penalty for Using Poles Pointed With Iron.

1315. No setting pole or shaft pointed with iron or other metal shall be used or carried upon any canal, feeder, or lock as aforesaid, and the master or owner of any boat, or person employed in navigating the same, violating this regulation, shall for every such offense forfeit any sum not exceeding five dollars, and the lock-keepers and other superintendents or agents having charge of any canal or part therof, or lock as aforesaid, are hereby authorized and empowered to seize any setting pole or shaft shod with iron or other metal, used or carried contrary to the provisions of this section.[49]

Recovery of Penalties.

1316. All fines, penalties, and forfeitures herein provided, imposed, or given, shall be recovered and appropriated as provided by the act to which this is a supplement.[50]

Oaths of Officers.

1317. The several superintendents of motive power, supervisors of repairs, collectors of tolls, and toll gatherers, weighmasters, and inspectors of cargoes, and their assistants and clerks, and all other agents upon the public improvements who have been appointed by the board of canal commissioners, and who are now in office, or who may hereafter be appointed by the same, shall take and subscribe an oath or affirmation, before some judge, alderman, or justice of the peace of this Commonwealth, in the following form, to wit:

I, , being duly appointed , do swear (or affirm, as the case may be) that I will support the Constitution of the United States and of this Commonwealth, and

[47] Act of March 19, 1830, Sec. 8, P. L. 118.
[48] Act of March 19, 1830, Sec. 9, P. L. 118.
[49] Act of March 19, 1830, Sec. 10, P. L. 118.
[50] Act of March 19, 1830, Sec. 12, P. L. 118.

will well and truly observe and obey all the laws and regulations relative to the canals and railroads of this Commonwealth, as well as all lawful instructions that may from time to time be given to me, by any competent authority, concerning the same; and that I will in all things discharge the duties pertaining to my said office or appointment with fidelity.

Which oath or affirmation, when so taken and subscribed, shall be certified by the officer before whom it was taken, and filed in the office of the secretary of the Commonwealth.[51]

Certain Officers Authorized to Administer Oaths.

1318. The several collectors of tolls on the canals and railroads of this Commonwealth shall have authority to administer oaths or affirmations to any owner, captain, conductor, or other agent of any boat or car used upon the State improvements, and to examine them on oath or affirmation, touching the weight and description of their cargoes, and in relation to all other matters and things connected with the faithful discharge of the official duties of the said collectors; and any person who shall knowingly swear falsely before any of the said collectors, shall be liable to prosecution, conviction, and punishment, as in other cases of willful perjury.[52]

Service of Process.

1319. When any action is commenced by any person or persons, or bodies corporate, against an incorporated railroad or canal company, in any county in which the corporate property of such company is wholly or in part situated, it shall be lawful, if the president, treasurer, secretary, or chief clerk of such corporation does not reside or cannot be found in such county, for the sheriff, or other officer to whom such process is directed, to serve the same on any manager or director of such company being in such county, and the service so made shall be deemed sufficient; and in case no director or manager can be found in the county to serve the process as hereinbefore stated.[53]

[51] Act of May 31, 1844, Sec. 7, P. L. 582.
[52] Act of May 31, 1844, Sec. 8, P. L. 582.
[53] Act of March 21, 1842, Sec. 8, P. L. 145.

Change of Venue.

1320. It shall and may be lawful for either party, in any suit or action now pending or that may hereafter be brought in any of the courts of this Commonwealth, by or against any canal or railroad company, to remove the same into the court of any other adjacent county through which the canal or railroad of such company is not located, which suits, so removed, shall be so proceeded in by the proper court in like manner, and subject to like rules and proceedings as if it had remained in the court in which it was originally commenced, and upon final judgment, testatum executions may issue as in other cases: Provided, that the party so removing shall first take and subscribe an oath or affirmation, to be filed of record with the cause, that such removal is not made for the purpose of delay, but because he firmly believes a fair and impartial trial cannot be had in the county through which such canal or railroad may pass: And provided further, that the provisions of this act shall not be so construed as to interfere with the existing laws, relative to the assessment of damages to property occasioned by the construction of such canals or railroads, nor with the right and privilege heretofore granted to any canal or railroad company, to have suits against them tried in any particular county or counties.[54]

Costs on Change of Venue.

1321. All and every suit or action now pending, or that may hereafter be brought, by or against any canal or railroad company, in any of the courts of this Commonwealth, and which now are or hereafter shall be removed into a court of any other adjacent county, by virtue of the Act of April 14, 1834, relative to suits brought by and against canal and railroad companies, the costs and expenses thereof shall be borne and paid by the county in which suit or action was brought; and in all cases where the venue of any suit now depending has been or may be changed, and where the venue of any suit hereafter to be instituted may be changed, and where suits are directed to be brought in any particular county, the costs of summoning the jury and the pay of the jurors shall be borne by the county in which the cause of action originated.[55]

[54] Act of April 14, 1834, Sec. 1, P. L. 395.
[55] Act of April 14, 1838, Sec. 5, P. L. 396.

It shall and may be lawful for the county commissioners of the county into which any suit or action now is or hereafter may be removed, by virtue of the above recited act, to ask, demand, sue for, recover, and receive of the commissioners of the county from which the same may or shall be removed, all the costs and expenses incurred by the county to which the same may have been removed as aforesaid.[56]

Arbitration—Production of Books.

1322. Arbitrators shall have power in any action depending before them, between any contractors, laborers, or workmen, and any company incorporated by the laws of this Commonwealth, and empowered to construct, make, and manage any railroad, canal, or other public internal improvement, to require either party to produce any books or writings, in their possession or power, which contain evidence pertinent to the issue; and if such party shall fail to produce such books or writings, or to satisfy said arbitrators why the same is not in their power so to do, it shall be lawful for the said arbitrators to find an award against such party, if plaintiff, of no cause of action; if defendant, for such sum as the plaintiff, his agent, or attorney, shall make oath or affirmance, is justly due, according to the best of his knowledge and belief: Provided, that before such requirement shall be made by such arbitrators, it shall be proved to their satisfaction, on oath or affirmation, that clear and distinct notice in writing shall have been given to produce such books or writings at least ten days previous thereto.[57]

Where Justices may Depute Persons to Serve Process.

1323. Where any trespass or malicious mischief shall be committed by any person or persons, boating or traveling on the Schuylkill Canal or tow-path, it shall and may be lawful for any justice of the peace of either of the said counties, when applied to for that purpose, to issue process as in other cases; and when the proper officer cannot conveniently be procured to serve such process, to depute a proper person or persons for that purpose, and such person or persons so deputed shall have all the power and authority of the proper

[56] Act of April 14, 1838, P. L. 396.

[57] Act of February 24, 1847, Sec. 1, P. L. 153.

officers to serve such process: Provided, that before any such deputation be made by such justice the person or persons so applying shall first make oath or affirmation that he or they verily believe that before the proper officer could be procured to serve such process the persons so offending would escape beyond the jurisdiction of the said justice of the peace.[58]

[58] Act of March 23, 1829, Sec. 1, 10 Sm. 305.

APPENDIX.

I. Constitutional Provisions.
II. Act of April 29, 1874, Annotated to Show Changes by Later Legislation.
III. Law of Procedure in Corporation Meetings. By Hon. George M. Dallas.
IV. Forms.

I.

CONSTITUTIONAL PROVISIONS.

Article XVI—Private Corporations.

Section 1. All existing charters, or grants of special or exclusive privileges, under which a *bona fide* organization shall not have taken place, and business commenced in good faith, at the time of the adoption of this Constitution, shall thereafter have no validity.[1]

Sec. 2. The General Assembly shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend the same, or pass any other general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution.

Sec. 3. The exercise of the right of eminent domain shall never be abridged, or so construed as to prevent the General Assembly from taking the property and franchises of incorporated companies, and subjecting them to public use the same as the property of individuals; and the exercise of the police power of the State shall never be abridged, or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the State.

[1] See Price's Index to Local Laws of Pennsylvania for index of acts relating to corporations passed prior to the Constitution of 1874.

Sec. 4. In all elections for directors or managers of a corporation, each member or shareholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer.[2]

Sec. 5. No foreign corporation shall do any business in this State, without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served.[3]

Sec. 6. No corporation shall engage in any business other than that expressly authorized in its charter; nor shall it take or hold any real estate, except such as may be necessary and proper for its legitimate business.[4]

Sec. 7. No corporation shall issue stocks or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void.[5] The stock and indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock, first obtained, at a meeting to be held, after sixty days' notice, given in pursuance of law.[6]

Sec. 8. Municipal and other corporations, and individuals invested with the privilege of taking private property for public use, shall make just compensation for property taken, injured, or destroyed by the construction or enlargement of their works, highways, or improvements, which compensation shall be paid or secured before such taking, injury, or destruction. The General Assembly is hereby prohibited from depriving any person of an appeal from any preliminary assessment of damages against any such corporations or individuals, made by viewers or otherwise; and the amount of such damages, in all cases of appeal, shall, on the demand of either party, be determined by a jury, according to the course of the common law.[7]

Sec. 9. Every banking law shall provide for the registry and countersigning, by an officer of the State, of all notes or bills designed for circulation, and that ample security to the

[2] See Sections 309-315 as to cumulative voting.
[3] See Sections 561-569.
[4] See Chapter XXXII.
[5] See Chapter VII, Contribution of Property.
[6] See Chapter XXVI.
[7] See Chapter XXXIII, Eminent Domain.

full amount thereof shall be deposited with the auditor-general, for the redemption of such notes or bills.

Sec. 10. The General Assembly shall have the power to alter, revoke, or annul any charter of incorporation now existing, and revokable at the adoption of this Constitution, or any that may hereafter be created, whenever, in their opinion, it may be injurious to the citizens of this Commonwealth, in such manner, however, that no injustice shall be done to the corporators. No law hereafter enacted shall create, renew, or extend the charter of more than one corporation.[8]

Sec. 11. No corporate body to possess banking and discounting privileges shall be created or organized, in pursuance of any law, without three months' previous public notice, at the place of the intended location, of the intention to apply for such privileges in such manner as shall be prescribed by law; nor shall a charter for such privilege be granted for a longer period than twenty years.

Sec. 12. Any association or corporation organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph within this State, and to connect the same with other lines; and the General Assembly shall, by general law, of uniform operation, provide reasonable regulations to give full effect to this section. No telegraph company shall consolidate with, or hold a controlling interest in the stock or bonds of any other telegraph company owning a competing line, or acquire, by purchase or otherwise, any other competing line of telegraph.[9]

Sec. 13. The term "corporations" as used in this article shall be construed to include all joint stock companies or associations having any of the powers or privileges of corporations not possessed by individuals or partnerships.

Article XVII—Railroads and Canals.

Section 1. All railroads and canals shall be public highways, and all railroad and canal companies shall be common carriers. Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any points within this State, and to connect,

[8] See Chapter XXXVIII.
[9] See Chapter LXXIX.

at the State line, with railroads of other States. Every railroad company shall have the right, with its road, to intersect, connect with, or cross any other railroad; and shall receive and transport each the other's passengers, tonnage, and cars, loaded or empty, without delay or discrimination.

Sec. 2. Every railroad and canal corporation organized in this State shall maintain an office therein, where transfers of its stock shall be made, and where its books shall be kept for inspection by any stockholder or creditor of such corporation, in which shall be recorded the amount of capital stock subscribed or paid in, and by whom, the names of the owners of its stock, and the amounts owned by them respectively, the transfers of said stock, and the names and places of residence of its officers.

Sec. 3. All individuals, associations, and corporations shall have equal right to have persons and property transported over railroads and canals, and no undue or unreasonable discrimination shall be made in charges for, or in facilities for, transportation of freight or passengers within this State, or coming from or going to any other State. Persons and property transported over any railroad shall be delivered at any station at charges not exceeding the charges for transportation of persons and property of the same class, in the same direction, to any more distant station; but excursion and commutation tickets may be issued at special rates.

Sec. 4. No railroad, canal, or other corporation, or the lessees, purchasers, or managers of any railroad or canal corporation, shall consolidate the stock, property, or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control any other railroad or canal corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad or canal corporation act as an officer of any other railroad or canal corporation owning or having the control of a parallel or competing line; and the question whether railroads or canals are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury, as in other civil issues.

Sec. 5. No incorporated company doing the business of a common carrier shall, directly or indirectly, prosecute or engage in mining or manufacturing articles for transportation over its works, nor shall such company, directly or in-

directly, engage in any other business than that of common carriers, or hold or acquire lands, freehold, or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business; but any mining or manufacturing company may carry the products of its mines and manufactories on its railroad or canal, not exceeding fifty miles in length.

Sec. 6. No president, director, officer, agent, or employee of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company.

Sec. 7. No discrimination in charges or facilities for transportation shall be made between transportation companies and individuals, or in favor of either by abatement, drawback, or otherwise; and no railroad or canal company, or any lessee, manager, or employee thereof shall make any preference in furnishing cars or motive power.

Sec. 8. No railroad, railway, or other transportation company shall grant free passes or passes at a discount to any persons except officers or employees of the company.

Sec. 9. No street passenger railway shall be constructed within the limits of any city, borough, or township without the consent of its local authorities.

Sec. 10. No railroad, canal, or other transportation company in existence at the time of the adoption of this article, shall have the benefit of any future legislation, by general or special laws, except on condition of complete acceptance of all the provisions of this article.

Sec. 11. The existing powers and duties of the auditor-general in regard to railroads, canals, or other transportation companies, except as to their accounts, are hereby transferred to the secretary of internal affairs, who shall have a general supervision over them, subject to such regulations and alterations as shall be provided by law; and, in addition to the annual reports now required to be made, said secretary may require special reports at any time upon any subject relating to the business of said companies from any officer or officers thereof.

Sec. 12. The General Assembly shall enforce, by appropriate legislation, the provisions of this article.

II.

THE ACT OF APRIL 29, 1874.

ANNOTATED SO AS TO SHOW AS TO EACH SECTION THE AMENDMENTS, CHANGES, AND ADDITIONS BY LATER LEGISLATION.

AN ACT

To provide for the incorporation and regulation of certain corporations.

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same, That corporations may be formed under the provisions of this act by the voluntary association of five or more persons, for the purposes, and in the manner mentioned herein, and when so formed, each of them by virtue of its existence as such, shall have the following powers, unless otherwise specially provided:

GENERAL POWERS.

First. To have succession by its corporate name for the period limited by its charter, and when no period is limited thereby, or by this act, perpetually, subject to the power of the General Assembly, under the Constitution of this Commonwealth.

Second. To maintain and defend judicial proceedings.

Third. To make and use a common seal and alter the same at pleasure.

Fourth. To hold, purchase, and transfer such real and personal property as the purposes of the corporation may require, not exceeding the amount limited by its charter or by law.

Fifth. To appoint and remove such subordinate officers and agents as the business of the corporation requires, and to allow them a suitable compensation.

Sixth. To make by-laws not inconsistent with law, for the management of its property, the regulation of its affairs, and the transfer of its stock.

Seventh. To enter into any obligation necessary to the transaction of its ordinary affairs.*

CLASSES.

Sec. 2. The purposes for which the said corporation may be formed shall be as follows, and shall be divided into two classes:

CORPORATIONS NOT FOR PROFIT—FIRST CLASS.

The first, those for—

I. The support of public worship.

II. The support of any benevolent, charitable, educational, or missionary undertaking.

III. The support of any literary, medical, or scientific undertaking, library association, or the promotion of music, painting, or other fine arts.

IV. The encouragement of agriculture and horticulture.

V. The maintenance of public or private parks, and of facilities for skating, boating, trotting, and other innocent or athletic sports, including clubs for such purposes, and for the preservation of game and fish.

VI. The maintenance of a club for social enjoyments.

VII. The maintenance of a public or private cemetery.

VIII. The erection of halls for public or private purposes.

IX. The maintenance of a society for beneficial or protective purposes to its members from funds collected therein.

X. The support of fire engine, hook and ladder, hose or other companies for the control of fire.

Each of the said corporations may hold real estate to an amount the clear yearly value or income whereof shall not exceed twenty thousand dollars.[1]

* Section 1 has not been changed by subsequent legislation.

[1] Four additional sub-sections were added by later acts. Sub-sections 11 and 12 were added by the Act of April 17, 1876, Sec. 2, P. L. 30, and were as follows:

XI. "For the encouragement and protection of trade and commerce."

CORPORATIONS FOR PROFIT—SECOND CLASS.

The second class, those for—

I. The insurance of the lives of domestic animals.[2]

II. The insurance of human beings against death, sickness, or personal injury.[3]

III. The prevention and punishment of theft or willful injuries to property, and insurance against such risks.

IV. The construction and maintenance of any species of road other than a railroad, and of bridges in connection therewith.[4]

XII. "For the formation and maintenance of military organizations."

Sub-section 13 was added by the Act of June 25, 1895, P. L. 313, and is as follows:

XIII. "For the maintenance of a society for the improvement of streets and public places in any city, borough, or township in this Commonwealth."

Sub-section 14 was added by the Act of June 25, 1895, P. L. 313, and is as follows:

XIV. "For receiving and holding property, real and personal, of and for unincorporated religious, beneficial, charitable, educational, and missionary societies and associations, and executing trusts thereof."

By the Act of May 25, 1887, P. L. 265, corporations were authorized to be formed for "the prevention of cruelty to children and aged persons." This act in terms refers to the second section of the Act of April 29, 1874, but the new class is given no sub-section number.

The Act of July 15, 1897, takes as a basis of amendment the Act of April 29, 1874, including Sections XI, XII, XIII, added by later acts, but makes no reference to corporations for "the prevention of cruelty to children and aged persons," as provided by the Act of May 25, 1887, P. L. 265.

[2] This sub-section was repealed by the Act of May 1, 1876, Section 1, Clause 4, and Sec. 57, P. L. 53, except that under Section 4 of the Act of May 1, 1876, associations may be formed to issue policies not containing a guaranteed sum of insurance.

[3] This section is repealed by the Act of May 1, 1876, Section 1, Clause 3, and Sec. 57, P. L. 53, except as to associations issuing policies not containing a guaranteed sum of insurance.

[4] This sub-section was changed by the Act of May 24, 1887, P. L. 186, to read as follows:

IV. "The grading, curbing, paving, or macadamizing, construction, and maintenance of any species of streets, roads, or highways, and the furnishing of the materials of labor thereof, or construction and maintenance of any species of road other than a railroad and of bridges in connection therewith." When the corporation act was again amended by the Act of June 10, 1893, P. L. 435, the Act of April 17, 1876, P. L. 31, was taken as the basis of amendment, and the change made by the act of 1887 was

V. The construction and maintenance of a bridge over streams within this State.

VI. The construction and maintenance of a telegraph line.[5]

VII. The establishment and maintenance of a ferry.

VIII. The building of ships, vessels, or boats, and carriage of persons and property thereon.

IX. The supply of water to the public.[6]

X. The supply of ice to the public.[7]

XI. The manufacture and supply of gas, or the supply of light or heat to the public by any other means.[8]

XII. The transaction of a printing and publishing business.

XIII. The establishment and maintenance of an hotel or boarding house, opera and market house, or either.

ignored, and Sub-section 4 in the Act of 1893 appears as it originally stood in the Act of 1874. It is very obvious, however, that there was no legislative intent to repeal the paragraph as it was amended by the Act of May 24, 1887. See Section 985.

[5] The Act of May 1, 1876, P. L. 90, provided as follows: "That corporations of the second-class may be formed and created in the manner provided for by the act to which this is a supplement, and with all the rights and powers therein granted for the purpose of constructing, maintaining, and leasing lines of telegraph for the private use of individuals, firms, corporations, municipal and otherwise, for general business and for police, fire alarm, or messenger business, or for the transaction of any business in which electricity, over or through wires, may be applied for any useful purpose."

[6] The Act of May 16, 1889, Sec. 1, P. L. 226, amended paragraph 9 to read as follows:

IX. "The supply of water to the public, or the supply, storage, or transportation of water and water power for commercial and manufacturing purposes." The Act of June 10, 1893, ignored the amendment as it did in the case of paragraph 4.

[7] The Act of June 24, 1895, Sec. 1, P. L. 253, amended paragraph 10 so as to read as follows:

X. "The supply of ice to the public, and the establishment of a system of refrigeration by which the public may obtain materials for refrigerating purposes through pipes or conduits from central stations."

[8] The Act of May 8, 1889, P. L. 136, amended paragraph 11 so as to read as follows:

XI. "The manufacture and supply of gas, or the supply of light, heat, and power by means of electricity, or the supply of light, heat, or power to the public by any other means." The Act of June 10, 1893, ignored this amendment.

XIV. The creating, purchasing, holding, and selling of patent rights for inventions and designs, with the right to issue license for the same, and receive pay therefor.[9]

XV. Building and loan associations.

XVI. Associations for the purchase and sale of real estate, and for safe deposit companies.[10]

XVII. The manufacture of iron or steel, or both, or of any other metal, or of any article of commerce from metal or wood, or both.

XVIII. The carrying on of any mechanical, mining, quarrying, or manufacturing business, including all of the purposes covered by the provisions of the acts of the General Assembly, entitled "An act to encourage manufacturing operations in this Commonwealth," approved April 7, 1849, entitled "An act relating to corporations for mechanical, manufacturing, mining, and quarrying purposes," approved July 18, 1863, and the several supplements to each of said acts, including the incorporation of grain elevator, storage warehouse, and storage yard companies; and also, including the storage and transportation of water, with the right to take rivulets and land, and erect reservoirs for holding water, and excluding the distilling or manufacture of intoxicating liquors.[11]

[9] The Act of May 16, 1889, Sec. 1, P. L. 241, amended paragraph 14 so as to read as follows:

XIV. "The creating, purchasing, holding, and selling of patent rights for inventions and designs, and the purchasing of copyrights for books, publications, and registered trade-marks, with the right to issue license for the same, and receive pay therefor." The Act of June 10, 1893, ignored this amendment.

[10] The Act of April 17, 1876, P. L. 30, amended paragraph 16 so as to read as follows:

XVI. "Associations for the purchase and sale of real estate, or for holding, leasing, and selling real estate, for maintaining or erecting walls or banks for the protection of low-lying lands, and for safe deposit companies."

The Act of June 25, 1895, Sec. 1, P. L. 295, amended paragraph 16 so as to read as follows:

XVI. "Associations for the purchase and sale of real estate, or for holding, leasing, and selling real estate, for maintaining or erecting walls or banks for the protection of low-lying lands, and for safe deposit companies, and for buying, selling, vending, or dealing in any kind or kinds of goods, wares, and merchandise at wholesale."

[11] The Act of April 17, 1876, P. L. 30, re-enacted paragraph 18 without

XIX. The insurance of owners of real estate, mortgagees, and others interested in real estate, from loss by reason of defective titles, liens, and incumbrances.

change. The Act of April 10, 1879, Sec. 1, P. L. 20, added the words "and also including the manufacturing and brewing of malt liquors." The Act of June 2, 1883, Sec. 1, P. L. 61, amended the paragraph so as to read as follows:

XVIII. "The carrying on of any mechanical, mining, quarrying, or manufacturing business, including all of the purposes covered by the provisions of the Act of the General Assembly, entitled 'An act to encourage manufacturing operations in this Commonwealth,' approved April 7, 1849, and entitled 'An act relating to corporations for mechanical, manufacturing, mining, and quarrying purposes,' approved July 18, 1863, and the several supplements to each of said acts, including the incorporation of grain elevator, storage warehouse, and storage yard companies, and also including the storage and transportation of water, with the right to take rivulets and land and erect reservoirs for holding water, and excluding the distilling or manufacture of intoxicating liquors, and companies may be organized under this act, having the right to transport, store, insure, and ship petroleum, and for that purpose to lay down, construct and maintain pipes, tubing, tanks, offices, and such other machinery, devices, or arrangements as may be necessary to fully carry out that right; and also with the right to enter upon, take, and occupy such land and other property as may be requisite for the purposes of such corporations."

The Act of June 22, 1883, P. L. 156, passed in the same month, also amended paragraph 18, but omitted all mention of petroleum and pipe line companies. In this act the paragraph appears as follows:

XVIII. "The carrying on of any mechanical, mining, quarrying, or manufacturing business, including all of the purposes covered by the provisions of the Acts of the General Assembly, entitled 'An act to encourage manufacturing operations in this Commonwealth, approved April 7, 1849, entitled 'An act relating to corporations for mechanical, manufacing, mining, and quarrying purposes,' approved July 18, 1863, and the several supplements to each of said acts, including the incorporation of grain elevators, storage-house, and storage-yard companies, and also including the storage and transportation of water, with the right to take rivulets and land, and erect reservoirs for holding water, the construction of dams in any stream, and the driving and floating of saw-logs, lumber, and timber on and over any stream, not exceeding twenty miles in length, by the usual methods for driving and floating logs, timber, and lumber on streams, and so as not to obstruct the descending navigation by rafts and boats, and also including the manufacture and brewing of malt liquors, but excluding the distilling and manufacture of spirituous liquors."

The Act of May 21, 1889, P. L. 259, which also amended the paragraph, took as the basis of amendment the Act of June 22, 1883, and pipe line

XX. The re-chartering of corporations of either of these classes the charters whereof are about to expire.[12]

and petroleum companies were again omitted. In the Act of 1889 the paragraph appears as follows:

XVIII. "The carrying on of any mechanical, mining, quarrying, or manufacturing business, including all of the purposes covered by the provisions of the Acts of the General Assembly, entitled 'An act to encourage manufacturing operations in this Commonwealth,' approved April 7, 1849, entitled 'An act relating to corporations for mechanical, manufacturing, mining, and quarrying purposes,' approved July 18, 1863, and the several supplements to each of said acts, including the incorporation of grain elevators, storage house and storage yard companies, and also including companies for the storage, transportation, and furnishing of water, with the right to take rivulets and land, and erect reservoirs for holding water for manufacturing and other purposes, and for the creation, establishing, furnishing, transmission, and using of water power therefrom, the construction of dams in any stream, and the driving and floating of saw-logs, lumber, and timber on and over any stream not exceeding twenty miles in length, and the heads of all streams not exceeding twenty miles in length from their source, by the usual method of driving and floating logs, timber, and lumber on streams, and so as not to obstruct the descending navigation by rafts and boats, and also including the manufacture and brewing of malt liquors, but excluding the distilling and manufacture of spirituous liquors."

The Act of June 10, 1893, P. L. 412, re-enacted the paragraph as it appeared in the Act of May 21, 1889, except that the words "thirty-five" were substituted for the word "twenty" in the two places where the word twenty occurred. No mention was made of petroleum and pipe line companies.

The Act of June 10, 1893, P. L. 435, which purported to amend the whole of Section 2 of the Act of April 29, 1874, simply re-enacted paragraph 18 as it stood in the Act of 1874, ignoring all the preceding amendments of the paragraph.

It will be noted that there were two Acts of June 10, 1893, one P. L. 412 and the other P. L. 435.

[12] Five numbered sub-sections were added by later acts, and also an unnumbered sub-section providing for the construction and operation of motors and cables.

The Act of April 17, 1876, P. L. 30, added the following sub-sections:

XXI. "The construction and maintenance of a wharf or wharves for public and private use, and the maintenance of any unincorporated wharf or wharves already constructed."

XXII. "The construction, erection, and maintenance of observatories for public use or scientific purposes."

XXIII. "The formation and operation of stage and omnibus lines."

XXIV. "The formation and operation of inclined planes for the

MODE OF INCORPORATION.

Sec. 3. The charter of an intended corporation must be subscribed by five or more persons, three of whom at least must be citizens of this Commonwealth, and shall set forth:

CONTENTS OF CERTIFICATE.

I. The name of the corporation.

II. The purpose for which it is formed.

III. The place or places where its business is to be transacted.

IV. The term for which it is to exist.

V. The names and residence of the subscribers and the number of shares subscribed by each.

VI. The number of its directors and the names and residences of those who are chosen directors for the first year.

VII. The amount of its capital stock, if any, and the number and par value of shares into which it is divided.

NOTICE TO BE GIVEN.

Notice of the intention to apply for any such charter shall be inserted in two newspapers of general circulation, printed in the proper county, for three weeks, setting forth briefly the character and object of the corporation to be formed, and the intention to make application therefor.

transportation of passengers and freight [or for the construction and maintenance of tunnels and underground passageways].

In paragraph 24, as above quoted, the words "or for the construction and maintenance of tunnels and underground passageways," were added by the Act of June 25, 1895, Sec. 1, P. L. 310.

Paragraph 25 was added by the Act of June 10, 1893, P. L. 435, and reads as follows:

"The construction and maintenance of sewers, culverts, conduits, and pipes, with all necessary inlets and appliances for surface and undersurface, and sewage drainage for the health, comfort, and convenience of inhabitants, and sanitary improvement in cities, boroughs, and townships of the Commonwealth, and for this purpose to enter upon and occupy any public highway, with the consent of the local authorities."

The Act of June 13, 1882, Sec. 6, P. L. 123, added an unnumbered paragraph, which is as follows:

"The construction and operation of motors and cables and the necessary apparatus and mechanical fixtures for applying and operating the same."

CERTIFICATES FOR FIRST CLASS.

The said certificates of incorporation of the first class shall be acknowledged by at least three of those who subscribe to them before the recorder of deeds of the county in which the business of the corporation is to be transacted, to be their act and deed, and the same being duly certified under the hand and official seal of the said recorder of deeds, shall be presented to a law judge of the said county, accompanied by proof of the publication of the notice of such application, who is hereby required to peruse and examine said instrument, and if the same shall be found to be in the proper form, and within the purposes named in the first class specified in the foregoing section, and shall appear lawful and not injurious to the community, he shall endorse thereon these facts, and shall order and decree thereon that the charter is approved, and that upon the recording of the said charter and order, the subscribers thereto and their associates, shall be a corporation for the purposes and upon the terms therein stated, and the said order and charter shall be recorded in the office for the recording of deeds in and for the county aforesaid, and from thenceforth the persons named therein and subscribing the same, and their associates and successors, shall be a corporation by the name therein given.

CERTIFICATES FOR SECOND CLASS.

The certificate for a corporation embraced within the second class, named in the foregoing section, shall set forth all that is hereinbefore required to be set forth, and except building and loan associations, shall also state that 10 per centum of the capital stock thereof has been paid in cash to the treasurer of the intended corporation, and the name and residence of such treasurer shall be therein given. The same shall be acknowledged by at least three of the subscribers thereto, before the recorder of deeds of the county in which the chief operations are to be carried on, or in which the principal office is situated, and they shall also make and subscribe an oath or affirmation before him, to be indorsed on the said certificate, that the statements contained therein are true. The said certificate, accompanied with proof of publication of notice as hereinbefore provided, shall then be produced to the governor of this Commonwealth, who shall examine the

same, and if he find it to be in proper form and within the purposes named in the second class, specified in the foregoing section, he shall approve thereof and indorse his approval thereon, and direct letters-patent to issue in the usual form, incorporating the subscribers and their associates and successors into a body politic and corporate, in deed and in law, by the name chosen, and the said certificate shall be recorded in the office of the secretary of the Commonwealth, in a book to be by him kept for that purpose, and he shall forthwith furnish to the auditor-general an abstract therefrom, showing the name, location, amount of capital stock, and name and address of the treasurer of such corporation. The said original certificate, with all of its indorsements, shall then be recorded in the office for the recording of deeds, in and for the county where the chief operations are to be carried on, and from thenceforth the subscribers thereto, and their associates and successors, shall be a corporation, for the purposes and upon the terms named in the said charter. Certified copies of both the records thereof and of the charters of the corporations named in the first class specified in the foregoing section, shall be competent evidence for all purposes in the courts of this Commonwealth. The secretary of the Commonwealth shall charge and receive a fee of five dollars upon every paper relating to a corporation filed or recorded in his office.[13]

LENGTH OF GRANT—POWER TO REVOKE.

Sec. 4. The charters for incorporations named in this act may be made perpetual, or may be limited in time by their own provisions; and the General Assembly reserves the power to revoke or annul any charter of incorporation granted or accepted under the provisions of this act, whenever in the opinion of the said General Assembly it may be injurious to the citizens of this Commonwealth, in such manner, how-

[13] Section 3 has not been changed by subsequent legislation, except that the Act of April 15, 1891, Sec. 1, P. L. 18, provides that "all certificates of association or articles of incorporation may be acknowledged and sworn to before a notary public of the Commonwealth of Pennsylvania in the same manner and with like force and effect as though acknowledged and sworn to before the recorder of deeds of the proper county."

For the construction of Section 3 of the Act of April 29, 1874, see Chapters II-V and Chapters VII-IX, *supra.*

ever, that no injustice shall be done to the corporators or their successors.[14]

BY-LAWS.

Sec. 5. The by-laws of every corporation created under the provisions of this statute, or accepting the same, shall be deemed and taken to be its law, subordinate to this statute, the charter of the same, the Constitution and laws of this Commonwealth, and the Constitution of the United States. They shall be made by the stockholders or members of the corporation, at a general meeting called for that purpose, unless the charter prescribes another body, or a different mode. They shall prescribe the time and place of meeting of the corporation, the powers and duties of its officials, and such other matters as may be pertinent and necessary for the business to be transacted, and may contain penalties for the breach thereof, not exceeding twenty dollars.

OFFICERS AND THEIR DUTIES.

The business of every corporation created hereunder, or accepting the same, shall be managed and conducted by a president, a board of directors, or trustees, a clerk, a treasurer, and such other officers, agents, and factors as the corporation authorizes for that purpose. The directors or trustees shall be chosen annually by the stockholders or members, at the time fixed by the by-laws, and shall hold their office until others are chosen and qualified in their stead; the manner of such choice and of the choice or appointment of all other agents and officers of the company, shall be prescribed by the by-laws. The number of directors or trustees shall not be less than three; one of them shall be chosen president by the directors, or by the members of the corporation, as the by-laws shall direct. The members of said corporation may, at a meeting to be called for that purpose, determine, fix or change the number of directors or trustees that shall thereafter govern its affairs; and a majority of the whole number of such directors or trustees shall be necessary to constitute a quorum. The clerk shall be sworn and shall record all the votes of the corporation, and the minutes of its transactions, in a book to be kept for that purpose. The treasurer shall give bond in such sum and with

[14] Section 4 has not been changed by subsequent legislation.

such sureties as shall be required by the by-laws, for the faithful discharge of his duties, and he shall keep the moneys of the corporation in a separate book account, to his credit as treasurer, and if he shall neglect or refuse so to do, he shall be liable to a penalty of fifty dollars for every day he shall fail to do so, to be recovered at the suit of any informer in an action of debt.[15]

[15] The Act of May 14, 1891, P. L. 61, re-enacted the portion of Section 5 relating to the by-laws literally, and amended the portion relating to officers and their duties so as to read as follows:

"The business of every corporation created hereunder, or accepting the same, shall be managed by a president, a board of directors or trustees, a secretary or clerk, a treasurer, and such other officers, agents, and factors as the corporation authorizes for that purpose, and nothing in any law contained shall prevent or be construed to prohibit the vice-president, treasurer, solicitor, or other officer of any corporation organized or existing under this act, from being a director of such company and receiving at the same time such compensation for his services as such officer as the board of directors of such company may direct. The directors or trustees shall be chosen annually by the stockholders or members, at the time fixed by the by-laws, and shall hold their office until others are chosen and qualified in their stead; the manner of such choice and of the choice or appointment of all other agents and officers of the company, shall be prescribed by the by-laws. The number of directors or trustees shall not be less than three; one of them shall be chosen president by the directors or by the members of the corporation, as the by-laws shall direct. The members of said corporation may, at a meeting to be called for that purpose, determine, fix, or change the number of directors or trustees that shall thereafter govern its affairs; and a majority of the whole number of such directors or trustees shall be necessary to constitute a quorum. The secretary or clerk shall be sworn and shall record all the votes of the corporation, and the minutes of its transactions, in a book to be kept for that purpose. The treasurer shall give bond in such sum and with such sureties as shall be required by the by-laws, for the faithful discharge of his duties, and he shall keep the moneys of the corporation in a separate book account, to his credit as treasurer, and if he shall neglect or refuse so to do, he shall be liable to a penalty of $50 for every day he shall fail to do so, to be recovered at the suit of any informer in an action of debt."

The Act of May 31, 1887, P. L. 281, provided as follows:

"It shall be lawful, from and after the passage of this act, for any corporation, chartered or existing by or under any law of this State, to determine by the vote of its stockholders holding a majority in interest of all of its stock, at a meeting duly called for the purpose, the time of holding the annual meeting for the election of officers of the corporation, and the number of directors that shall thereafter govern its affairs: Pro-

QUORUM OF STOCKHOLDERS.

Sec. 6. Every such corporation may determine, by its by-laws what number of stockholders shall attend, either in person or by proxy, or what number of shares or amount of interest shall be represented at any meeting to constitute a quorum; if the quorum is not so determined, a majority in interest of the stockholders shall constitute a quorum.[16]

vided, that the number of directors so determined shall not be less than three nor more than fifteen, and that at least one-third of the directors of every corporation shall be and remain, during their term of service, residents of the State of Pennsylvania; and provided further, that this act shall not apply to any company heretofore incorporated, unless such company shall file, in the office of the secretary of the Commonwealth, a certificate of the acceptance of this act, and also of the provisions of the Constitution of this Commonwealth, which acceptance shall be made by resolution, adopted at a regular or called meeting of the directors, trustees, or other proper officer of such corporation, certified under the seal of the corporation, and a copy of which resolution, certified under the seal of the office of the secretary of the Commonwealth, shall be evidence for all purposes.

"All acts, or parts of acts, inconsistent herewith, shall be and the same are, in so far as they are inconsistent herewith, hereby repealed."

The Act of June 17, 1887, Sec. 1, P. L. 411, provided as follows:

"Whenever the stockholders of any corporation incorporated under the Act of April 29, 1874, or any other law of this Commonwealth, shall, at a meeting called for the purpose, decide, by a majority vote of those present either in person or by proxy, to elect a portion of their directors for a term or terms longer than one year, it may and shall be lawful for such corporations, at the next ensuing election, to divide the directors or managers, which are to be chosen, into two, three, or four classes, and to elect the first class to serve for the term of one year, and the second, third, or fourth to serve for two, three, or four years, respectively, and at all ensuing elections of said corporations, the stockholders shall only elect the number of directors necessary to take the place of those whose term of office shall then expire, and such directors shall be elected for the longest term for which any class may have been elected as hereinbefore provided."

The Act of May 14, 1891, P. L. 61, provided as follows:

"It shall be lawful for any vice-president, treasurer, or other salaried officer of any trust, deposit, or other purely private or business corporation, to hereafter serve, or to have heretofore concurrently served such corporation as a director thereof, when lawfully elected to said position." See Chapter VIII, By-Laws, and Chapters XVI-XVIII, relating to officers and directors.

[16] Section 6 has not been changed by subsequent legislation.

CERTIFICATES OF STOCK.

Sec. 7. The directors of such corporation shall procure certificates or evidences of stock, and shall deliver them signed by the president, countersigned by the treasurer, and sealed with the common seal of the corporation, to each person or party entitled to receive the same, according to the number of shares by him, her, or them respectively held, which certificates or evidences of stock shall be transferable at the pleasure of the holder, in person or by attorney duly authorized, as the by-laws may prescribe, subject, however, to all payments due, or to become due thereon; and the assignee or party to whom the same shall have been so transferred, shall be a member of said corporation, and have and enjoy all the immunities, privileges, and franchises, and be subject to all the liabilities, conditions, and penalties incident thereto, in the same manner as the original subscriber or holder would have been, but no certificate shall be transferred so long as the holder thereof is indebted to said company, unless the board of directors shall consent thereto.[17]

[17] Section 7 has not been in express terms amended, supplemented, or repealed by later acts, but the Act of June 24, 1895, P. L. 258, entitled "An act relating to and regulating the issue and transfer of certificates of stock of companies incorporated under the laws of this Commonwealth," provides as follows:

Section 1. "Any stockholder of any company incorporated under the laws of this Commonwealth shall be entitled to receive a certificate of the number of shares standing to his, her, or their credit on the books of the corporation, which certificate shall be signed by the president or vice-president or other officer designated by the board of directors, countersigned by the treasurer, and sealed with the common seal of the corporation, which certificate or evidence of stock ownership shall be transferable on such books at the pleasure of the holder in person or by attorney, duly authorized as the by-laws may prescribe, subject, however, to all payments due or to become due thereon, and the assignee or party to whom the same shall have been so transferred shall be a member of said corporation and have and enjoy all the immunities, privileges, and franchises and be subject to all the liabilities, conditions, and penalties incident thereto, in the same manner as the original subscriber or holder would have been. And upon a sale of such stock in satisfaction of any debt for which it is pledged the purchaser shall have the right to compel a transfer of such stock upon the corporation books and delivery of a proper certificate therefor."

OATH OF OFFICERS HOLDING ELECTIONS.

Sec. 8. No person acting as judge or officer holding an election for any such corporation, shall enter on the duties of his office or appointment until he take and subscribe an oath or affirmation before a judge, alderman, justice of the peace, or other person qualified by law to administer oaths, that he will discharge the duties of his office or appointment with fidelity, that he will not receive any vote but such as he verily believes to be legal; and if any such judge or officer shall, knowingly and willfully, violate his oath or affirmation, he shall be subject to all the penalties imposed by law upon the officers of the general election of this Commonwealth violating their duties, and shall be proceeded against in like manner, and with like effect; and if any election, as aforesaid, be held without the person holding the same having first taken an oath or affirmation, as aforesaid, or be invalid for any other reason, such election shall be set aside in the manner now provided by law, and a new election ordered by the Court of Common Pleas of the proper county, upon the petition of not less than five stockholders supported by proof satisfactory to said court.[18]

VACANCIES.

Sec. 9. In case of death, removal, or resignation of the president or any of the directors, treasurer, or other officer of any such company, the remaining directors may supply the vacancy thus created until the next election.[19]

CUMULATIVE VOTING.

Sec. 10. In all elections for directors, managers, or trustees of any corporation created under the provisions of this statute, or accepting its provisions, each member or stock-

Section 2. "All laws or parts of laws inconsistent herewith be and the same are hereby repealed."

See Chapter XXII, CAPITAL STOCK, and Chapter XXIV, TRANSFER OF STOCK.

[18] Section 8 has not been changed by later legislation.

See Chapter XXIX, CORPORATE MEETINGS AND ELECTIONS.

[19] Section 9 has not been changed by later legislation.

See Section 149, *supra*.

holder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer; that is to say, if the said member or stockholder own one share of stock, or has one vote, and is entitled to one vote for each of six directors, by virtue thereof, he may give one vote to each of said six directors, or six votes for any one thereof, or a less number of votes for any less number of directors, and in this manner may distribute or cumulate his votes as he may see fit; all elections for directors or trustees shall be by ballot, and every share of stock shall entitle the holder thereof to one vote, in person or by proxy, to be exercised as provided in this section.[20]

CAPITAL STOCK.

Sec. 11. The capital stock of every such corporation that has or requires a capital stock, shall consist of not more than one million dollars, and shall be divided into shares of not more than one hundred dollars each; and all subscriptions to the capital stock shall be paid in such instalments and at such times as the directors may require, and if default be made in any payment the person or persons in default shall be liable to pay, in addition to the amount so called for and unpaid, at the rate of one-half of one per centum per month for the delay of such payment, and the directors may cause suit to be brought for the recovery of the amount due, together with the penalty of one-half of one per centum per

[20] Section 10 was amended by the Act of April 25, 1876, Sec. 1, P. L. 47, so as to read as follows:

"In all elections for directors, managers, or trustees of any corporation created under the provisions of this statute, or accepting its provisions, each member or stockholder or other person having a right to vote, may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates as he may prefer, that is to say: If the said member or stockholder or other person having a right to vote, own one share of stock or has one vote, or is entitled to one vote for each of six directors by virtue thereof, he may give one vote to each of said six directors, or six votes for any one thereof, or a less number of votes for any less number of directors, whatever may be the actual number to be elected, and in this manner may distribute or cumulate his votes as he may see fit; all elections for directors or trustees shall be by ballot, and every share of stock shall entitle the holder thereof to one vote, in person or by proxy, to be exercised as provided in this section."

See Sections 309-315, *supra*, as to cumulative voting.

month, as aforesaid, or the directors may cause the stock to be sold in the manner provided in Clause 2 of Section 39 of this act; and no stockholder shall be entitled to vote at any election, or at any meeting of the stockohlders, on whose share or shares any instalments or arrearages may have been due and unpaid for the period of thirty days immediately preceding such election or meeting. The shares of the capital stock of every such company may be transfered on the books of the company, in person or by attorney, subject to such regulations as the by-laws may prescribe; but the provisions of this section shall not apply to corporations in which by this act different and other rules and provisions are enacted for their regulation and government.[21]

[21] Section 11 was amended by the Act of May 9, 1889, so as to read as follows:

"The capital stock of every such corporation that has or requires a capital stock shall consist of not more than $1,000,000, except companies incorporated for the purpose of supplying the public with water, whose capital stock shall not exceed $2,000,000 and shall be divided into shares of not more than $100 each; and all subscriptions to the capital stock shall be paid in such instalments and at such times as the directors may require, and if default be made in any payment the person or persons in default shall be liable to pay, in addition to the amount so called for and unpaid, at the rate of one-half of one per centum per month for the delay of such payment. and the directors may cause suit to be brought for the recovery of the amount due, together with the penalty of one-half of one per centum per month, as aforesaid, or the directors may cause the stock to be sold in the manner provided in Clause 2 of Section 39 of this act; and no stockholder shall be entitled to vote at any election, or at any meeting of the stockholders, on whose share or shares any instalments or arrearages may have been due and unpaid for the period of thirty days immediately preceding such election or meeting. The shares of the capital stock of every such company may be transferred on the books of the company, in person or by attorney, subject to such regulations as the by-laws may prescribe; but the provisions of this section shall not apply to corporations in which by this act different and other rules and provisions are enacted for their regulation and government."

By the Act of June 25, 1895, P. L. 310, corporations not for profit were authorized to issue stock. The act is as follows:

"That all corporations organized not for profit, under the provisions of 'An act to provide for the incorporation and regulation of certain corporations,' approved April 29, 1874, and the several supplements thereto, shall have authority, if a majority of its members shall so ordain, to issue capital stock to an amount not exceeding $250,000, in shares of the par value of $50. Said power to rest upon the recording of the minute au-

Sec. 12. The stock of every corporation created under the provisions of this statute shall be deemed personal property; and no shares shall be transferable until all previous calls thereon shall have been fully paid in or shall have been declared forfeited for the non-payment of calls thereon; and every corporation may, from time to time, at a legal meeting called for the purpose, assess upon each share of stock such sums of money as the corporation may think proper, not ex-

thorizing said issue in the county in which the corporation was erected, and filing an exemplification thereof with the secretary of the Commonwealth. Thereafter such corporations shall be subject to the same taxation as corporations for profit."

The Act of May 26, 1893, P. L. 141, regulated the voting of stock by trustees, beneficial owners, and pledgees. The act was as follows:

"Section 1. The certificate of stock and transfer books, or either, of any corporation of this Commonwealth, shall be *prima facie* evidence of the right of the person named therein to vote thereon as the owner, either personally or by due proxy. If, however, objection is taken by an actual stockholder at the time the ballot is tendered, accompanied by a written statement under oath that the person in whose name such stock stands on such certificate, or transfer books, and who is offering to vote thereon either in person or by proxy, is not the owner thereof, either in his own right or as active trustee with the character of his trusteeship disclosed on the face of said certificate, or transfer books, in connection with his name, it shall be the duty of the judges of election to inquire and determine summarily whether the facts are as represented in such statement, and if so, the vote or votes so tendered shall be rejected: Provided, however, that nothing in this section shall be held to prohibit executors, administrators, guardians, or trustees created by last will and testament, or by decree of court, from voting on stock standing in the name of a decedent, minor, or other beneficiary.

"Section 2. In cases where, under the terms of the preceding section, the person named in the certificate, or transfer books, is not permitted to vote, the beneficial owner of such stock shall have the right to vote thereon upon furnishing to the judges of election satisfactory evidence of ownership.

"Section 3. As between the pledgor and the pledgee of capital stock pledged to secure a specific loan with a fixed period or periods of maturity, the right to vote shall be determined as follows: First. By the written agreement of the pledgor and pledgee. Second. In all other instances the pledgor shall be held to be the owner and entitled to the right to vote."

See Chapter XXII, CAPITAL STOCK; Chapter XXIII, STOCK SUBSCRIPTION, and Chapter XXIV, TRANSFER OF STOCK.

ceeding in the whole the amount at which each share was originally limited; and such sums assessed shall be paid to the treasurer at such times and in such instalments as the corporation directs. No note or obligation given by a stockholder, whether secured by pledge or otherwise, shall be considered as payment of any part of the capital stock; and it shall not be lawful for any such corporation to use any of its funds in the purchase of any stock in any other corporation, or to hold the same, except as collateral security for a prior indebtedness, except as provided in Section 37 of this act.[22]

[22] Section 12 was amended by the Act of May 25, 1887, P. L. 273, by omitting the portion of the section which provided for an additional assessment upon the stock. The amended section reads as follows:

"The stock of every corporation created under the provisions of this statute shall be deemed personal property; and no shares shall be transferable until all previous calls thereon shall have been fully paid in, or shall have been declared forfeited for the non-payment of calls thereon. No note or obligation given by a stockholder, whether secured by pledge or otherwise, shall be considered as payment of any part of the capital stock; and it shall not be lawful for any such corporation to use any of its funds in the purchase of any stock in any other corporation, or to hold the same, except as collateral security for a prior indebtedness, except as provided in Section 37 of said act."

Section 12 was further amended by the Act of June 26, 1895, P. L. 369, so as to read as follows:

"The stock of every corporation created under the provisions of this statute shall be deemed personal property; and no shares shall be transferable until all previous calls thereon shall have been fully paid in, or shall have been declared forfeited for the non-payment of calls thereon. No note or obligation given by a stockholder, whether secured by pledge or otherwise, shall be considered as a payment of any part of the capital stock. It shall and may be lawful for any company, organized under the provisions of this act, either for the purpose of carrying on any manufacturing business or for supply of water for manufacturing and supplying light, of this Commonwealth or elsewhere, to subscribe for, take, purchase, hold, and dispose of the bonds or stock in any company of the same character, incorporated under the provisions of this act, or its supplements, or guarantee the payment of said bonds and the interest thereon, or either principal or interest, or to enter into contracts for the use or lease of the corporate property, real, personal, or mixed of such company, upon such terms as may be agreed upon with the company or companies owning the same, and to run, use, and operate such property in accordance with such contract or lease."

See Chapter XXIV, TRANSFER OF STOCK.

POWER TO MORTGAGE.

Sec. 13. It shall be lawful for all corporations to borrow money or to secure any indebtedness created by them, by issuing bonds, with or without coupons attached thereto, and to secure the same by a mortgage or mortgages to be given and executed to a trustee or trustees, for the use of the bondholders, upon their real estate and machinery, or on their real estate alone, to an amount not exceeding one-half of the capital stock of the corporation paid in, and at a rate of interest not exceeding 6 per centum; but this section shall not be construed to prevent mortgages for a greater amount and at a high rate of interest, where the power to make the same is expressly given by the terms of this statute to certain classes of corporations, or is contained in the charter of any private corporations accepting this act, or in the statutes under which certain other classes thereof are by the provisions of this statute to be controlled, governed, and managed.[23]

[23] Section 13 was amended by the Act of May 21, 1889, P. L. 257, so as to read as follows:

"It shall be lawful for all corporations to borrow money or to secure any indebtedness created by them, by issuing bonds, with or without coupons attached thereto, and to secure the same by a mortgage or mortgages to be given and executed to a trustee or trustees, for the use of the bondholders, upon their real estate and machinery, or on their real estate alone, to an amount not exceeding one-half of the capital stock of the corporation paid in, and at a rate of interest not exceeding 6 per centum: Provided, that it shall be lawful for such corporations as belong to the classes named in Clauses 4, 5, 6, 7, 9, and 11 of corporations for profit, of the second class, as set forth in Section 2 of the act of which this is a supplement, and also for such corporations as belong to the class named in Clause 24, Section 2, of the Act of Assembly, approved April 17, 1876, so to borrow money and so to secure the payment of the same, by a mortgage or mortgages on its property and franchises, to an amount not exceeding double the amount of the capital stock of the corporation actually paid in, and at a rate of interest not exceeding 6 per centum, and this section shall not be construed to prevent mortgages for a greater amount and at a higher rate of interest, where the power to make the same is expressly given by the terms of this statute to certain classes of corporations, or is contained in the charter of any private corporations accepting this act, or in the statutes under which certain other classes thereof are by the provisions of this statute to be controlled, governed, and managed."

See Chapter XXXIV, BONDS AND MORTGAGE.

LIABILITY OF STOCKHOLDERS.

Sec. 14. The stockholders in each of said corporations shall be liable in their individual capacity to the amount of stock held by each of them, for all work or labor done, or materials furnished, to carry on the operations of each of said corporations; but this section shall not be construed to increase or diminish the liability of stockholders in corporations, which, by the terms of this statute, are to be governed, controlled, and managed by the provisions of other statutes, but their liability shall be fixed and defined by the terms of the statutes by which said corporations are to be governed, controlled, and managed.[24]

Sec. 15. In any action or bill in equity, brought to enforce any liability under the provisions of this act, the plaintiff may include as defendants any one or more of the stockholders of such corporation claimed to be liable therefor; and if judgment be given in favor of the plaintiff for his claim, or any part thereof, and any one or more of the stockholders so made defendants, shall be found to be liable, judgment shall be given against him or them. The execution upon such judgment shall be first levied on the property of such corporation, if to be found in the county where the chief business of the corporation is carried on, and in case such property, sufficient to satisfy the same, cannot be found in said county, the deficiency, or so much thereof as the stockholder or stockholders, defendants, in such judgment, shall be liable to pay, shall be collected of the property of such stockholder or stockholders; on the payment of any judgment as aforesaid, or any part thereof, by one or more stockholders, the stockholder or stockholders so paying the same shall be

[24] The Act of April 17, 1876, Sec. 3, P. L. 32, amended Section 14 so as to read as follows:

"The stockholders in each of said corporations shall be liable, in their individual capacity, to the amount of stock held by each of them, for all work or labor done to carry on the operations of each of said corporations; but this section shall not be construed to increase or diminish the liability of stockholders in corporations which, by the terms of this statute, are to be governed, controlled, and managed by the provisions of other statutes, but their liability shall be fixed and defined by the terms of the statutes by which said corporations are to be governed, controlled, and managed."

See Chapter XXX, LIABILITY OF STOCKHOLDERS.

entitled to have such judgment, or so much thereof as may have been paid by him or them, assigned to him or them for his or their benefit, with power to enforce the same in manner aforesaid, first against the company, and in case the amount so paid by him or them shall not be collected of the property of the corporation, then ratably against the other solvent stockholders, if any such there be, originally liable for the claim on which such judgment was obtained; but no stockholder shall be personally liable for payment of any debt contracted by any such corporation, unless suit for the collection of the same shall be brought against such stockholder or stockholders within six months after such debt shall have become due.[25]

PREFERRED STOCK.

Sec. 16. Every corporation created under the provisions of this act, or accepting its provisions, may, with the consent of a majority in interest of its stockholders, obtaining at a meeting to be called for that purpose, of which public notice shall be given during thirty days in a newspaper of the proper county, issue preferred stock of the corporation, the holders of which preferred stock shall be entitled to receive such dividends thereon as the board of directors of the corporation may prescribe, payable only out of the net earnings of the corporation.[26]

PROPERTY MAY BE TAKEN FOR STOCK—DEFERRED STOCK.

Sec. 17. Every corporation created under the provisions of this act, or accepting its provisions, may take such real

[25] Section 15 has not been changed by subsequent legislation.

The Act of May 4, 1893, Sec. 1, P. L. 29, provided as follows:

"The several Courts of Common Pleas of this Commonwealth having the powers of a court of chancery shall have jurisdiction of all litigation and disputes between stockholders and parties claiming to be stockholders, and between creditors and stockholders and creditors and the corporation, of all corporations within this State; and in the proceedings before the court in such case the service of process upon the company shall be held and considered as a service upon one of the principal defendants, as provided in the first section of the Act of April 6, 1859, relating to equity jurisdiction and proceedings."

See Chapter XXX, LIABILITY OF STOCKHOLDERS.

[26] Section 16 has not been changed by subsequent legislation.

See Chapter XXV, PREFERRED AND DEFERRED STOCK.

and personal estate, mineral rights, patent rights, and other property as is necessary for the purposes of its organization and business, and issue stock to the amount of the value thereof in payment thereof, and the stock so issued shall be declared and taken to be full paid stock, and not liable to any further calls or assessments; and in the charter and the certificates and statements to be made by the subscribers and officers of the corporation, such stock shall not be stated or certified as having been issued for cash paid into the company, but shall be stated or certified in this respect according to the fact. No such corporation shall issue either bonds or stock except for money, labor done, or money or property actually received, and all fictitious increase of stock or indebtedness in any form shall be void; every such corporation may provide for the issue of deferred stock in payment for such real or personal estate or mineral rights, and if so provided, it shall be expressly stated in the charter filed, or in a certificate to be made and recorded, or in the acceptance of this statute to be filed by any corporation accepting its provisions, with the amount of such deferred stock, and the consideration of the same, and the terms on which the same shall be issued; and the said stock may be made to await payments of dividends thereon, until out of the net earnings at least 5 per cent, has been declared and paid upon the other full paid stock of the corporation.[27]

[27] Section 17 was amended by the Act of April 17, 1876, Sec. 4, P. L. 32, to read as follows:

"Every corporation created under the provisions of this act, or accepting its provisions, may take such real and personal estate, mineral rights, patent rights, and other property as is necessary for the purposes of its organization and business, and issue stock to the amount of the value thereof, in payment thereof, and the stock so issued shall be declared and taken to be full paid stock and not liable to any further calls or assessments, and in the charter and certificates and statements to be made by the subscribers and officers of the corporation, such stock shall not be stated or certified as having been issued for cash paid into the company, but shall be stated or certified in this respect according to the fact, and the executors or administrators of any deceased tenant in common of land, mines, and mineral rights so proposed to be taken may, and they are hereby authorized to convey the individual estate and interest of such decedent therein to such company, receiving therefor so much stock in such company as the said decedent would have been entitled to receive in his lifetime, to be held in the same manner as the lands: Provided,

INCREASE OF CAPITAL STOCK.

Sec. 18. The capital stock or indebtedness of any corporation to be created under the provisions of this statute, or accepting its provisions, may be increased, from time to time, by the consent of the persons or bodies corporate holding the larger amount in value of the stock of such company, to such amount as such corporation is by this act authorized to increase its capital stock or indebtedness, but such increase shall only be made for money, labor done, or money or property actually received.[28]

ELECTION TO INCREASE CAPITAL.

Sec. 19. That any such corporation desirous of increasing its capital stock or indebtedness as provided by this act, shall, by a resolution of its board of directors, call a meeting of its stockholders therefor, which meeting shall be held at its chief office or place of business in this Commonwealth; and notice of the time, place, and object of said meeting, shall be published once a week for sixty days prior to such meet-

that no directions or limitations contained in any last will and testament of such decedent shall be in any manner interfered with: And provided, that before making such conveyance, such executors or administrators shall give sufficient security, to be approved by the Orphans' Court having jurisdiction of their accounts, for the faithful application of the stock received therefor; no such corporation shall issue either bonds or stock except for money, labor done, or money or property actually received, and all fictitious increase of stock or indebtedness in any form shall be void; every such corporation may provide for the issue of deferred stock in payment for such real or personal estate or mineral rights, and if so provided, it shall be expressly stated in the charter filed, or in a certificate to be made and recorded, or in the acceptance of this statute, to be filed by any corporation accepting its provisions, with the amount of such deferred stock, and the consideration of the same, and the terms on which the same shall be issued; and the said stock may be made to await payment of dividends thereon, until out of the net earnings at least 5 per centum has been declared and paid upon other full paid stock of the corporation."

See Chapter VII, CONTRIBUTION OF PROPERTY; Chapter XXV, PREFERRED AND DEFERRED STOCK.

[28] Section 18 has not been changed by subsequent legislation.

ing, in at least one newspaper published in the county, city, or borough wherein such office or place of business is situate.[29]

Sec. 20. At the meeting called, pursuant to the nineteenth section of this act, an election of the stockholders of such corporation shall be taken for or against such increase, which shall be conducted by three judges, stockholders of said corporation, appointed by the board of directors to hold said election, and if one or more of said judges be absent, the judge or judges present shall appoint a judge or judges, who shall act in the place of the judge or judges absent, and who shall respectively take and subscribe an oath or affirmation before an officer authorized by law to administer the same, well and truly, and according to law, to conduct such election to the best of their ability; and the said judges shall decide upon the qualification of voters, and when the election is closed count the number of shares voted for and against such increase, and declare whether the persons or bodies corporate holding the larger amount of the stock of such corporation have consented to such increase, or refused to consent thereto, and shall make out duplicate returns of said election, stating the number of shares of stock that voted for such increase, and the number that voted against such increase, and subscribe and deliver the same to one of the chief officers of said company.[30]

Sec. 21. Each ballot shall have indorsed thereon the number of shares thereby represented, and be signed by the holder thereof, or by the persons holding a proxy therefor; but no share or shares transferred within sixty days shall entitle the holder or holders thereof to vote at such election or meeting, nor shall any proxy be received, or entitle the holder to vote, unless the same shall bear date and have been executed within three months next preceding such election or meeting; and it shall be the duty of such corporation to furnish the judges at said meeting with a statement of the amount of its capital stock, with the names of persons or bodies corporate holding the same, and number of shares by each respectively held, which statement shall be signed by one of the chief officers of such corporation, with an affi-

[29] Section 19 has not been changed by subsequent legislation.
See Chapter XXVI, INCREASE OF CAPITAL STOCK OR INDEBTEDNESS.
[30] Section 20 has not been changed by subsequent legislation.

davit thereto annexed, that the same is true and correct to the best of his knowledge and belief.[31]

Sec. 22. That it shall be the duty of such corporation, if consent is given to such increase, to file in the office of the secretary of the Commonwealth, within thirty days after such election or meeting, one of the copies of the return of such election provided for by the twentieth section of this act, with a copy of the resolution and notice calling same thereto annexed; and upon the increase of the capital stock or indebtedness of such corporation made pursuant thereto, it shall be the duty of the president or treasurer of such corporation, within thirty days thereafter, to make a return to the secretary of the Commonwealth, under oath, of the amount of such increase and terms of the same, that is to say, the terms on which additional stock is issued; and in case of neglect or omission so to do, the corporation shall be subject to a penalty of five thousand dollars, which penalty shall be collected on an account settled by the auditor-general and state treasurer, as accounts for taxes due the Commonwealth are settled and collected; and the secretary of the Commonwealth shall cause said returns to be recorded in a book to be kept for that purpose, and furnish a certified copy of the same to the auditor-general, and the corporation shall have the right to recover the same from the officer neglecting or omitting to file the return as aforesaid.[32]

CAPITAL STOCK MAY BE REDUCED.

Sec. 23. Any corporation created under the provisions of this act, and any corporation of the classes named in the second section hereof that is now in existence by virtue of

[31] Section 21 has not been changed by subsequent legislation.

[32] Section 22 has not been changed by subsequent legislation.

The Act of June 10, 1893, Sec. 1, P. L. 417, provided as follows:

"Any corporation created by special or general law shall, notwithstanding any limitation upon the amount of its capital stock by such special or general law, have authority, with the consent of the persons holding the larger amount in value of its stock, to increase its capital stock to accomplish [or] enlarge the objects and purposes of its incorporation to the amount of $30,000,000 in the aggregate; such increase may be made at once or from time to time as the stockholders aforesaid shall determine."

See Chapter XXVI, Increase of Capital Stock and Indebtedness.

any law of this Commonwealth, may reduce its capital stock by a vote of its stockholders taken in the manner and under the regulations prescribed in the eighteenth, nineteenth, twentieth, twenty-first, and twenty-second sections of this act.[33]

[33] Section 23 has been superseded by the Act of June 8, 1893, which provides as follows:

"Section 1. The capital stock of any corporation may be reduced from time to time by the consent of the persons or bodies corporate holding the larger amount in value of the stock of such company, provided that such reductions shall not be below the amount of capital stock required by law for the formation of such company.

"Section 2. Any corporation desirous of reducing its capital stock as provided by this act shall, by a resolution of its board of directors, call a meeting of its stockholders therefor, which meeting shall be held in its chief office or place of business in this Commonwealth, and notice of the time, place, and object of said meeting shall be published once a week for sixty days prior to such meeting in at least one newspaper published in the county, city, or borough wherein such office or place of business is situate.

"Section 3. At the meeting called pursuant to the second section of this act, an election of stockholders of such corporation shall be taken for or against such reduction, which shall be conducted by three judges, stockholders of said corporation, appointed by the board of directors to hold said election, and if one or more of said judges be absent, the judge or judges present shall appoint a judge or judges who shall act in the place of the judge or judges absent, and who shall respectively take and subscribe an oath or affirmation before an officer authorized by law to administer the same, well and truly, and according to law, to conduct such elections to the best of their ability, and the said judges shall decide upon the qualification of voters, and when the election is closed count the number of shares voted for and against such reduction, and declare whether the persons or bodies corporate holding the larger amount of the stock of such corporation have consented to such reduction or refused to consent thereto, and shall make out duplicate returns of said election, stating the number of shares of stock that voted for such reduction, and the number that voted against such reduction, and subscribe and deliver the same to one of the chief officers of said company.

"Section 4. Each ballot shall have indorsed thereon the number of shares thereby represented, but no share or shares transferred within sixty days shall entitle the holder or holders thereof to vote at such election or meeting, nor shall any proxy be received or entitle the holder to vote unless the same shall bear date and have been executed within three months next preceding such election or meeting, and it shall be the duty of such corporation to furnish the judges at said meeting with a statement of the amount of its capital stock, with the names of persons or

LIMIT OF LIABILITY.

Sec. 24. That the officers and stockholders of corporations organized under or accepting the provisions of this act shall not be individually liable for the debts of said corporation otherwise than in this act provided.[34]

CONSTRUCTION OF GRANT OF POWER.

Sec. 25. The incorporation of any association of persons for the purposes named in this act, or accepting the same, shall be held and taken to be of the same force and effect as

bodies corporate holding the same, and number of shares by each respectively held, which statement shall be signed by one of the chief officers of such corporation, with an affidavit thereto annexed that the same is true and correct to the best of his knowledge and belief.

"Section 5. It shall be the duty of such corporation, if consent is given to such reduction, to file in the office of the secretary of the Commonwealth, within thirty days after such election or meeting, one of the copies of the return of such election provided for by the third section of this act, with a copy of the resolution and notice calling the same thereto annexed, and upon the reduction of the capital stock of such corporation made pursuant thereto, it shall be the duty of the president or treasurer of such corporation, within thirty days thereafter, to make a return to the secretary of the Commonwealth, under oath, of the amount of such reduction, and in case of neglect or omission so to do, such corporation shall be subject to a penalty of $5,000, which penalty shall be collected on an account settled by the auditor-general and state treasurer as accounts for taxes due the Commonwealth are settled and collected, and the secretary of the Commonwealth shall cause said return to be recorded in a book kept for that purpose, and furnish a certified copy of the same to the auditor-general."

The Act of April 17, 1876, Sec. 5, P. L. 33, amending the Act of April 29, 1874, Sec. 23, provided as follows: "Any corporation created under the provisions of this act, and any corporation of the classes named in the second section hereof, that is now in existence by virtue of any law of this Commonwealth, may reduce its capital stock or alter and change the par value of the shares thereof, by a vote of the stockholders taken in the manner and under the regulations prescribed in the eighteenth, nineteenth, twentieth, twenty-first, and twenty-second sections of this act."

A corporation chartered prior to the Act of 1874 cannot reduce its capital stock under the provisions of Section 23, of the Act of 1874, until it has accepted the provision of the Constitution and Act of 1874: Opinion of the Attorney-General of August 21, 1877.

See Chapter XXVII, REDUCTION OF CAPITAL STOCK.

[34] Section 24 has not been changed by subsequent legislation.

if the powers and privileges conferred, and the duties enjoined, had been conferred and enjoined by special act of the legislature, and the franchises granted shall be construed according to the same rules of law and equity as if it had been created by special charter, and no modification or repeal of this act shall affect any franchise obtained under the provisions of the same.[35]

RETURN TO AUDITOR-GENERAL.

Sec. 26. No corporation of the second class shall go into operation without first having the name of the institution or company, the date of incorporation, the place of business, the amount of capital paid in, and the names of the president and treasurer of the same registered in the office of the auditor-general; and any such institution or company which shall neglect or refuse to comply with the provisions of this section, shall be subject to a penalty of five hundred dollars, which penalty shall be collected on an account settled by the auditor-general and state treasurer, as taxes on capital stock are settled and collected.

CORPORATIONS ACCEPTING.

Corporations for any of the purposes named, and covered by the provisions of this act, heretofore created by any special act, or in existence under the provisions of any general law of this Commonwealth, upon accepting the provisions of the Constitution and of this act by writing under the seal of said corporation, duly filed in the office of the secretary of the Commonwealth, shall be entitled to all of the privileges, immunities, franchises, and powers conferred by this act upon corporations to be created under the same; and upon such acceptance and approval thereof by the governor, he shall issue letters-patent to said corporation reciting the same.[36]

[35] Section 25 has not been changed by subsequent legislation.

[36] Section 26 was amended by the Act of April 17, 1876, Sec. 6, P. L. 33, to read as follows:

"No corporation of the second class shall go into operation without first having the name of the institution or company, the date of incorporation, the place of business, the amount of capital paid in, and the names of the president and treasurer of the same, registered in the office of the auditor-general; and any such institution or company which

INSURANCE OF DOMESTIC ANIMALS.

Sec. 27. Companies incorporated under the provisions of this act for the insurance of the lives of domestic animals, or any of them, shall have the power and right to make in-

shall neglect or refuse to comply with the provisions of this section shall be subject to a penalty of $500, which penalty shall be collected on an account settled by the auditor-general and state treasurer as taxes on capital stock are settled and collected. Any corporation or corporations for any of the purposes named and covered by the provisions of this act, heretofore created by any special act or acts, or in existence under the provisions of any general law of this Commonwealth, shall be entitled to all the privileges, immunities, franchises, and powers conferred by this act upon corporations to be created under the same, upon filing in the office of the secretary of the Commonwealth a certificate of a single corporation, or a joint certificate if two or more corporations incorporated for and doing the same kind of business, under the seal or seals of said corporation or corporations, accepting the provisions of the Constitution and of this act, duly authorized by a meeting of stockholders called for that purpose; and upon such acceptance and approval by the governor, he shall issue letters-patent to said corporation, or if two or more corporations, to said corporations as one corporation, under such name as shall be designated by said corporation or corporations in said single or joint certificate, together with the amount of capital, number of shares and par value thereof, as shall be designated by said corporation or corporations in said certificate: Provided, that where two or more corporations shall make a joint certificate as aforesaid, and letters-patent shall be issued to said new corporation, said corporations shall thenceforth be deemed, held, and taken to be merged and consolidated, and be subject to all the limitations and liabilities of this act."

The Act of June 7, 1879, Sec. 1, P. L. 112, provided as follows:

"Hereafter no institution or company, incorporated or organized by or under any law of this Commonwealth, general or special, or incorporated or organized under the laws of any other State and doing business in this Commonwealth, shall go into operation without first having the name of the institution or company, the date of incorporation or organization, the Act of Assembly or authority under which incorporated or organized, the place of business, the post-office address, and names of the president, secretary, and treasurer, the amount of capital authorized by its charter, and the amount of capital paid into the treasury of the company, registered in the office of the auditor-general; and every institution or company now engaged in business in this Commonwealth shall, within ninety days after the passage of this act, register as herein required in the office of the auditor-general; and any such institution or company which shall neglect or refuse to comply with the provisions of this section, shall be subject to a penalty of $500, which penalty shall be

surance of every kind pertaining to or connected with life risks of domestic animals of any and every kind, and against the loss by death of all kinds of cattle, live stock, valuable beasts and domestic animals of every kind, whether such death be the result of accident, natural causes, or diseases of any description whatever, and to make, execute, and perfect such and so many contracts, agreements, policies, and other instruments as may be required therefor.[37]

LIFE AND ACCIDENT INSURANCE COMPANIES.

Sec. 28. Companies incorporated under the provisions of this act for the insurance of human beings against sickness, death, or personal injury, shall have the power and right to

collected on an account settled by the auditor-general and state treasurer, in the same manner as taxes on stock are settled and collected."

The Act of June 1, 1889, Sec. 19, P. L. 427, is as follows:

"Hereafter no limited partnership, bank, joint stock association, corporation, or company whatsoever, formed, erected, incorporated, or organized by or under any law of this Commonwealth, general or special, or formed, erected, incorporated, or organized under the laws of any other State, and doing business in this Commonwealth, shall go into operation without first having the name of the institution or company, the date of incorporation or organization, the Act of Assembly, or authority under which formed, incorporated, or organized, the place of business, post-office address, the names of the president, chairman, secretary, and treasurer, or cashier, and the amount of capital authorized by its charter, and the amount of capital paid into the treasury, registered in the office of the auditor-general, and every limited partnership, bank, association, joint stock association, company, or corporation whatsoever, now engaged in business in this Commonwealth, shall, within ninety days after the passage of this act, register as herein required in the office of the auditor-general. All the corporations, companies, associations, and limited partnerships aforesaid shall annually hereafter notify the auditor-general of any change in their officers, and any such institution or company which shall neglect or refuse to comply with the provisions of this section shall be subject to a penalty of $500, which penalty shall be collected on an account settled by the auditor-general and state treasurer in the same manner as taxes on capital stock are settled and collected."

[37] Section 27 is materially modified if not repealed by the Act of May 1, 1876, Sec. 2, Clause 4, and Sec. 57, P. L. 53, Clause 4, provides for the incorporation of companies "to make insurance, either upon the stock or mutual principle, upon the lives of horses, cattle, and other live stock, and against loss, damage, or liability arising from any unknown or contingent event whatever, except the perils and risks enumerated in the preceding paragraphs of this section."

make insurances of every kind pertaining to or connected with death, accidents of every nature and kind to human beings, and to insurances of every kind against the death, sickness, or the health of human beings by disease of every kind, and whether within this Commonwealth or beyond it, and such corporations shall have the power and right to make, execute, and perfect such and so many contracts, agreements, policies, and other instruments as may be required therefor.[38]

INSURANCE OF TITLES.

Sec. 29. Companies incorporated under the provisions of this act for the insurance of owners of real estate, mortgages, and others interested in real estate, from loss by reason of defective titles, liens, and incumbrances, shall have the power and right to make insurances of every kind pertaining to or connected with titles to real estate, and shall have the power and right to make, execute, and perfect such and so many contracts, agreements, policies, and other instruments as may be required therefor.[39]

ROAD COMPANIES.

Sec. 30. The charter of a road company shall also state—

I. The kind of road intended to be constructed.

II. The places from and to which the road is intended to be run.

III. The counties through which it is to pass and the estimated length of the road. All road companies incorporated under this statute shall, from the date of the letters-patent creating the same, be governed, managed, and controlled as follows, and shall be entitled to the benefits of all the general laws of this Commonwealth regulating turnpike or plank roads:

Clause 1. The directors of such corporation shall have full power and authority to appoint, agree, and contract with such engineers, superintendents, artists, laborers, and other persons, as they may think necessary to make and construct such road, and collect the tolls hereinafter authorized, and

[38] Section 28 is superseded by the Act of May 1, 1876, P. L. 53.

[39] Section 29 is amended by the Acts of May 9, 1889, Sec. 1, P. L. 159, and May 29, 1895, P. L. 127, which are quoted in full in Chapter LXXX, TITLE INSURANCE AND TRUST COMPANIES.

fix their compensation, to ascertain the times, manner, and proportions in which the stockholders shall pay the amount of their respective shares in order to carry on their work; to draw orders on the treasurer for all debts contracted by them, which orders shall be signed by the president, or in his absence by a majority of the directors, and attested by their clerk, and to do and transact all other acts, matters, or things, as by the by-laws, orders and regulations of such corporations shall be entrusted to them.

Clause 2. It may be lawful for the directors of such corporation, by and with their superintendents, engineers, artists, workmen, laborers, their tools and instruments, carts, wagons, and other carriages, and beasts of draught or burden, to enter in and upon the lands contiguous and near to which the said road shall be made or constructed, first giving bond and proceeding as required by the forty-first section of this act. Any such corporation may change the location of any part of its road which may interfere with any graveyard or cemetery lot or lots.

Clause 3. The directors of every such corporation shall keep fair and just accounts, as well of all moneys received by them, as of those paid out and expended in the prosecution of the work, and shall, at least once in every year, submit their books and accounts to a general meeting of the stockholders.

Clause 4. The directors of such corporation shall have power to erect good and sufficient bridges over all the streams of water crossed by their road, whenever the same shall be found necessary, and shall cause a road, if a turnpike, to be laid out not exceeding fifty feet in width, and cause at least eighteen feet of said width, exclusive of gutters, ditches, or drains, to be made an artificial road of wood, stone, gravel, or other proper and convenient materials, such as the nature of the ground may require, and will afford, to be constructed in such manner as will admit an even surface, and so nearly level in its progress that it shall in no place rise or fall more than will form an angle of four degrees from a horizontal line; and if a plank road, the same shall be opened of any width not exceeding forty feet, and shall be graded in such manner as may be necessary for either a single or double track, as may be determined upon by the directors of the said corporation, each track being not less than eight feet in width, and so

nearly level in its progress that it shall in no place rise or fall more than will form an angle of three degrees with a horizontal line: Provided, that if any part of the ground on the route of said road shall be so hard and compact, as to make a good road without any covering of wood, gravel, stone, slate, or other hard substance, the said directors are hereby authorized to construct such part of said road without any such covering, and shall forever maintain and keep the same in good repair: Provided, that said bridges shall not be constructed so as to obstruct the navigation of any stream declared a public highway.

Clause 5. Whenever such corporation shall have finished five miles or more of road, or if the entire road be for a shorter distance, then when completed, the Court of Quarter Sessions of the proper county shall appoint forthwith three skillful, judicious, and disinterested persons to view and examine the same, and report on oath or affirmation, whether the said road is so far executed in a competent and workmanlike manner, according to the true intent and meaning of this act, and if their report shall be in the affirmative, then the said court shall by its order, under the seal of the court, permit and suffer said corporation to erect and fix such and so many gates upon and across the said road as will be necessary and sufficient to collect from all persons otherwise than on foot the same tolls as is herein authorized and granted.

Clause 6. When such corporation is licensed in manner aforesaid, it shall and may be lawful for them to appoint such and so many toll-gatherers as they shall think proper, to collect and receive of and from all and every person or persons using the said road, the toll and rates hereinafter mentioned, and to stop any person riding, leading, or driving any horses, cattle, hogs, sheep, coach, coaches, sulky, chair, chaise, phaeton, cart, wagon, wain, sleigh, sled, or any other carriage of burden or pleasure, from passing through the said gate, until they shall respectively have paid the same; that is to say, for every five miles in length of the said road, completed and licensed, as aforesaid, the following sums of money, and so in proportion for any lesser distance, or for any greater or lesser number of sheep, hogs, or cattle, to wit: For every score of hogs, five cents; for every score of sheep, five cents; for every score of cattle, ten cents; for every horse and his rider, or led horse, three cents; for every sulky, chair, or

chaise, with one horse and two wheels, six cents; with two horses, nine cents; for every chariot, coach, phaeton, or dearborn, with one horse and four wheels, ten cents; for every coach, phaeton, or chaise, with two horses and four wheels, twelve cents; for either of the carriages last mentioned, with four horses, twenty cents; for every other carriage of pleasure, under whatever name it may go, the like sums according to the number of wheels and horses drawing the same; for every stage wagon with two horses, twelve cents; for every such wagon with four horses, twenty cents; for every sleigh, three cents for each horse drawing the same; and for every sled, two cents for each horse drawing the same; for every cart or wagon, whose wheels shall be less than four inches, four cents for each horse drawing the same; and for every cart or wagon, whose wheels shall be four inches, and not exceeding seven inches, two cents for every horse drawing the same; for every cart or wagon, the breadth of whose wheels shall be more than seven inches, one cent for every horse drawing the same; and if any person or persons shall represent to the said company, or any of their officers, that he or she or they have traveled a less distance than he, she, or they have actually traveled along said road, with intent to defraud such corporation of its toll or any part thereof, such person or persons shall, for every such offense, forfeit and pay to the use of said corporation the sum of five dollars; and if any toll-gatherer shall demand and receive toll for a greater distance than the person of whom such toll is demanded shall have traveled along said turnpike road or plank road, or shall demand and receive greater toll from any person or persons than such toll-gatherer is authorized to demand and receive, by virtue of this act, such toll-gatherer shall forfeit and pay the sum of five dollars for every such offense to the supervisors of the township in which the forfeiture is incurred, to be expended in repairing township roads, and for the payment of which the said company shall be responsible; and all such penalties and forfeitures shall be recoverable, with costs of suit, before any justice of the peace of the county in which the offense is committed: Provided, that no toll shall be demanded from any person or persons passing and repassing from one part of his, her, or their farm to any other part of the same; and all persons with their vehicles, or horses, going to or from funerals or places of

public worship, or of military trainings or elections, shall be exempt from the payment of toll when traveling on such turnpike road.

Clause 7. Justices of the peace shall be inspectors of roads within their township or borough, and whenever a complaint in writing, to any two justices of the same is made, that any part of a plank road or turnpike in their township or borough is out of repair, they shall, without delay, view and examine the road complained of; and if they find such complaint to be true, they shall give notice, in writing, of the defect to the toll-gatherer or person attending the gate nearest the place out of repair, and may, in their discretion, order such gate to be thrown open, but such justices shall not order such gate to be thrown open unless notice, in writing, has been served on the gate-keeper nearest the place out of repair, particularly describing such place at least three days previous to making such order. Notice of such order shall be served on such gate-keeper, and immediately thereafter the gate ordered to be thrown open shall be opened, nor shall it be again shut, nor shall any toll be collected thereat until the said two justices of the peace of the township or borough where such road out of repair is located, shall grant a certificate that such road is in sufficient repair, and that such gate ought to be closed. Whenever any part of such road is out of repair, and the gate nearest to the place out of repair is situated in an adjoining county, any two justices of the peace of the township or borough in such adjoining county, where such gate may be, upon complaint made to them, in writing, shall view and examine the road complained of, and proceed thereon as provided in like manner as if the portion of road complained of was within the township where such gate is situated. Whenever any toll-gate is ordered to be thrown open, as herein provided, or whenever such justices of the peace refuse to grant a certificate that the road complained of is in sufficient repair, the company owning such gate, or the gate-keeper attending the same in their behalf, may appeal from the order or decision of such justices to the Court of Common Pleas of the county where such justices reside, by delivering a statement, in writing, of their order or decision and of such appeal, verified by affidavit, to the prothonotary thereof; and such appeal shall be placed at the head of the list for the next term of said court, and disposed of as

to law and justice shall appertain, without declaration of plea. The said appeal shall not be a supersedeas of the order to open the gate. If the court reverses the order or decision of the said justices, then such gate may be closed, but if it confirms the same, such gate shall not be closed until such justices of the peace grant a certificate that such road is in sufficient repair. Every keeper of a gate ordered to be thrown open who shall not immediately obey such order, or who shall not keep open such gate until a certificate permitting it to be closed shall be granted, or delay any person in passing, or take or demand any toll from any person passing, shall, for each offense, forfeit the sum of ten dollars to the party aggrieved. To each justice of the peace who shall view a plank or turnpike road, upon complaint made to him, shall be allowed the sum of two dollars and fifty cents for each day spent by him in the performance of such duty; and if the road viewed shall be adjudged out of repair, such fees shall be paid by the company to which the road shall belong, otherwise they shall be paid by the party making the complaint. Such fee, when payable by the company, shall be paid by the toll-gatherer nearest that of the road adjudged out of repair, on demand, and out of the tolls received or to be received by him, and may be recovered, with costs, of such toll-gatherer if he neglects or refuses to make such payment. The provisions of this section shall apply to all turnpike roads in existence in this Commonwealth governed and controlled by general laws.

Clause 8. In all cases of complaint made or suit instituted under the provisions of this act against any corporation, if the complainant shall fail to sustain his complaint or the plaintiff to sustain his suit, as the case may be, the corporation shall be entitled to recover costs, as in other cases, from the complainant or plaintiff, as the case may be, and in all cases where any corporation, which may have been chartered under and subject to the provisions of this act, shall be adjudged to pay any penalty or the costs of any proceedings authorized by this act, the party plaintiff or complainant shall have all the remedies for recovering of the same, with costs, against the said corporation that are provided for the recovery of debts or judgments of like amount in other cases; and if the said corporation shall fail to make payment in any case within twenty days after final adjudication, the Court

of Common Pleas of the proper county, on application of the plaintiff, or some other person in his behalf, shall direct sequestration, and appoint a sequestrator, who shall have like powers and be subject to all the regulations and requirements provided in the seventy-third and seventy-fourth sections of an Act of the General Assembly of this Commonwealth, entitled "An act relating to executions," passed June 16, 1836: Provided, that where the judgment is final before the justice, or is not appealed from as provided in this act, the complainant, before proceeding to sequestration, shall file in the Court of Common Pleas of the proper county a transcript of the proceedings and judgment before the justice, which transcript shall be entered of record in the said court as under existing laws for the filing and entering of transcripts of judgments in other cases, and from such filing and entering shall have the effect of a judgment originally entered in the said court.

Clause 9. If any person or persons whosoever, owning, riding in, or driving any sulky, chair, chaise, phaeton, cart, wagon, sleigh, sled, or other carriage of burden or pleasure, riding or leading any horse, or mule, or gelding, or driving any hogs, sheep, or other cattle, shall therewith pass through any private gate or bars, or along or over any private passage-way or other ground, near to or adjoining any gate erected, or which shall be erected in pursuance of this act, with an intent to defraud the company and avoid the payment of the toll or duty for passing through any such gate, or if any person or persons shall, with such intent, take off, or cause to be taken off, any horse, mare, or gelding, or other cattle, from any sulky, chair, chaise, phaeton, cart, wagon, sleigh, sled, or other carriage of burden or pleasure, or practice any other fraudulent means or device with the intent that the payment of any such toll or duty may be evaded or lessened, all and every person or persons, in all and every or any of the ways or manners offending, shall, for every such offense, respectively forfeit and pay to the directors of such road, as the case may be, any sum not exceeding ten dollars, to be sued for and recovered with costs of suit before any justice of the peace in like manner, and subject to the same rules and regulations as debts of a similar amount are by law sued for and recovered.

Clause 10. That the legislature shall have power to alter

the rate of toll fixed by this act, and the directors of any such company may lessen the same whenever they shall believe it necessary for the well-being of the corporations or the community at large.[40]

[40] Clause 6 of Section 30 was amended by the Act of April 30, 1879, P. L. 36, so as to read as follows:

"When such corporation is licensed in manner aforesaid, it shall and may be lawful for them to appoint such and so many toll-gatherers as they shall think proper, to collect and receive of and from all and every person or persons using the said road, the tolls and rates hereinafter mentioned, and to stop any person, riding, leading, or driving any horses, cattle, hogs, sheep, coach, coaches, sulky, chaise, phaeton, cart, wagon, wain, sleigh, sled, or any other carriage of pleasure or burden from passing through the said gate until they shall have respectively paid the same; that is to say, for every mile in length, or portion of a mile, whether passing through a gate or not of said road, completed and licensed as aforesaid, the following sums of money, and so in proportion for any greater or lesser number of sheep, hogs, or cattle, to wit: For every score of sheep, one cent; for every score of hogs, two cents; for every score of cattle, two cents: for every horse and his rider, or led horse, one cent; for every sleigh or sled, one cent for each horse drawing the same; for every sulky, chaise, or cart with two wheels, one cent for each horse drawing the same; for every carriage, coach, dearborn, or wagon with four wheels, whose wheels shall be less than four inches in breadth, with one horse, one and one-half cents, and for every additional horse drawing the same, one cent; for every wagon of burden, whose wheels shall be four inches and not exceeding seven inches wide, one cent for every horse drawing the same; for every wagon of burden, the breadth of whose wheels shall be more than seven inches, one-half cent for each horse drawing the same: Provided, that for any wagon, et cetera, carrying burden exceeding two tons in weight on wheels less than four inches wide, and for any wagon, et cetera, carrying burden exceeding four tons in weight on wheels less than six inches wide, double rates may be charged. And if any person or persons shall represent to the said company or any of their officers or employees, that he or she or they have traveled a less distance than he or she or they have actually traveled along said road, with intent to defraud said corporation of its toll, or any part thereof, such person or persons shall, for every such offense, be deemed guilty of a misdemeanor, and upon conviction thereof before any alderman, magistrate, or justice of the peace, shall be fined by such officer in any sum not exceeding ten dollars, to be paid one-half to the said corporation and the other half to the school fund of the township in which the offense was committed; and if said fine or penalty and the costs of the proceedings be not paid, then said alderman, magistrate, or justice of the peace shall commit said offender to the county prison, there to remain until discharged by due course of law."

FERRIES AND BRIDGE COMPANIES.

Sec. 31. The charter of a ferry or bridge company shall also state—

I. The stream over which the same is proposed to be erected.

The portion of Clause 6, relating to the penalty for demanding excessive toll, was not changed by the Act of 1879, and the last proviso of Clause 6 was re-enacted except that the words "or funerals" were omitted.

So far as Clause 7 relates to plank roads and turnpikes, it was repealed by the Act of May 22, 1878, P. L. 85, which is quoted in Chapter LXXII, ROAD COMPANIES.

Clause 9 was amended by the Act of April 30, 1879, P. L. 37, so as to read as follows:

"If any person or persons whosoever owning, riding in, or driving any sulky, chariot, chaise, phaeton, cart, wagon, sleigh, sled, or other carriage of burden or pleasure, riding or leading any horse, or mule, or gelding, or driving any hogs, sheep, or other cattle, shall therewith pass through any private gate or bars, or along or over any private passageway or other ground, near to or adjoining any gate erected, or which shall be erected in pursuance of this act, with an intent to defraud the company and avoid the payment of the toll or duty for passing through any such gate, or if any person or persons shall, with such intent, take off, or cause to be taken off, any horse, mare, or gelding, or other cattle, from any sulky, chair, chaise, phaeton, cart, wagon, sleigh, sled, or other carriage of burden or pleasure, or practice any other fraudulent means or device with the intent that the payment of any such toll or duty may be evaded or lessened, all and every person or persons, in all and every or any of the ways or manners offending, shall for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof before any alderman, magistrate, or justice of the peace, shall be fined by such officer in any sum not exceeding ten dollars, to be paid one-half to the company owning the turnpike road and the other half to the school fund of the township in which the offense was committed; and if said fine or penalty, and the costs of the proceedings, be not paid, then such alderman, magistrate, or justice of the peace shall commit said offender to the county prison, there to remain until discharged by due course of law."

The Act of June 4, 1879, P. L. 85, provided as follows:

"Any person or persons driving, riding in, or driving any wagon, carriage, or other vehicle, or riding or leading a horse or horses, or driving or leading any cattle or sheep, who shall willfully obstruct or impede the free and safe passage of any other person or vehicle, in attempting to evade the payment of toll at any toll-gate of any road of any association or commission authorized by law to erect gates and charge and collect tolls, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten dollars ($10) or

II. The place and county or counties of its location.

III. Its distance from any other bridge or ferry over the same stream, which shall have been before that date incorporated under the laws of this Commonwealth.

No bridge or ferry company shall have the right to exercise its corporate franchises within three thousand feet of any other bridge or ferry in actual use, at the date of issuing letters-patent to the new corporation, but nothing herein contained shall prevent the erection of bridges by municipalities as now provided by law.

All bridge companies incorporated under this statute, when not otherwise provided in this act, shall, from the date of the letters-patent creating the same, be governed, managed, and controlled as follows:

Clause 1. That before the directors of any such corporation shall proceed to build any such bridge, it shall be lawful for them to contract with the owner or owners of any land for the purchase of so much thereof as shall be necessary for the purpose of erecting and completing said bridge, and making all the necessary works and causeways to and from the same, if they can agree with the said owner or owners; but in case they cannot agree, proceedings shall be had, as provided in Section 41 of this act. The said bridge shall be so constructed as not to interfere with the free navigation of said creek or river.

Clause 2. When the said corporation shall have erected and completed a bridge over any creek or river under the authority of this act, the property thereof shall be vested in the said corporation, and it shall have the power to erect gates and to demand and receive tolls for crossing said bridge, at such rates as the president and directors thereof shall from time to time determine, not exceeding the rates following, namely: For every score of sheep or swine, eight cents; every score of horned or muley cattle, twenty-five cents; for every mule or horse driven or led, five cents; for every horse or mule, ladened or unladened, with rider, five cents; for every two-wheeled vehicle, and one horse, six cents; the same with two horses, ten cents; for every four-wheeled

by imprisonment in the county jail for a term not exceeding thirty days, or either or both, at the discretion of the court."

For other legislation relating to turnpike and road companies see Chapter LXXII, ROAD COMPANIES.

vehicle with two horses, fifteen cents; for either of the last named vehicles, with four horses, twenty cents; for every foot passenger, two cents; and they shall cause to be put up and kept in some conspicuous place, at the gates of said bridge, a list of the rates of toll.

Clause 3. If the said corporation, or any person employed for it, shall collect or demand any greater rate or prices for passing over said bridge than what is prescribed in the list of tolls put up at the gate as aforesaid, or neglect to keep said bridge in repair, he or they shall forfeit for every such offense the sum of ten dollars, to be recovered as debts of a similar amount are recovered, one-half to be paid to the county, and the other half to the person who may sue for the same.

Clause 4. That said corporation shall keep a just account of all moneys received by their several collectors of tolls for crossing said bridge, and after deducting all contingent costs and charges, and such proportion of the income as may be sufficient for a fund to provide against the decay, the repairing and re-building of the said bridge that time and accident may render necessary, they shall semi-annually declare and make a dividend of the balance among the stockholders, first giving notice personally or by advertisement of the time and place when and where the same shall be paid, and shall cause the same to be paid accordingly in ten days thereafter, or as soon thereafter as the same shall be demanded.

Clause 5. If any person or persons shall willfully pull down, break, or destroy, with intent to injure any part or parts of the said bridges, or any toll house, gates, bars, or other property of the said corporation erected for the use of said bridges, or shall willfully deform or destroy the letters or figures in any list of the rates of toll affixed in any place for the information of passengers, or shall willfully or maliciously obstruct or impede the passage in or over the said bridges, or any part or parts thereof, he, or she, or they so offending shall each of them forfeit and pay for each and every such offense to the said corporation the sum of ten dollars, to be recovered as other debts of a like amount are recoverable; and if any person shall be guilty of carrying any lighted segar or pipe, or of carrying fire in any manner whatsoever over said bridge, except in a lantern, or in some vessel secured, so that the probability of setting fire to said bridges shall be

fully prevented, or shall discharge any pistol, or gun, or any fire-arms on or near said bridges, he, she, or they so offending shall forfeit and pay to the said company the sum of five dollars each, with all other damages sustained to said bridges for every such offense, to be recovered as aforesaid; or if any person or persons shall evade the payment of any toll or duty for passing said bridges, or ride or drive his or their horse or horses on or over said bridge in a faster gait than a walk, he, she, or they so offending shall forfeit and pay to the said corporation the sum of five dollars for every such offense, to be recovered in like manner as aforesaid; but no suit shall be brought for any of the aforesaid offenses unless commenced within thirty days after it shall be known who committed said offense, and he, she, or they so offending shall remain liable to action at the suit of said corporation for such wrongs, if the sums herein mentioned be not sufficient to repair and satisfy said damage.

Clause 6. If any company incorporated under this law for the purpose of erecting any bridge as aforesaid, shall not proceed to carry on said work within the space of two years from the date of its letters-patent, and shall not, within the space of five years thereafter complete the same, the rights and privileges thereby granted to the said corporation shall revert to the Commonwealth.[41]

[41] The preliminary part of Section 1 and Clause 1 were amended by the Act of April 17, 1876, P. L. 34, so as to read as follows:

"Section 31. The charter of a ferry, wharf, or bridge company shall also state:

"I. The stream over or on which the same is proposed to be erected.

"II. The place and county or counties of its location.

"III. The distance from any other wharf, bridge, or ferry over or on the same stream which shall have been before that date incorporated under the laws of this Commonwealth.

"IV. All bridges and wharf companies incorporated under this statute, when not otherwise provided in this act, shall from the date of the letters-patent creating the same, be governed, managed, and controlled as follows:

"Clause 1. That before the directors of any such corporation shall proceed to build any such bridge or wharf it shall be lawful for them to contract with the owner or owners of any land for the purchase of so much thereof as shall be necessary for the purpose of erecting and completing said bridge or wharf, and making all the necessary works and causeways to and from the same, if they can agree with the said owner or owners; or whenever any fishing right or other easement is alleged to exist at, upon, or about the place where such wharf is about to be

Sec. 32. Any ferry company incorporated as aforesaid, shall have the right and power to erect and maintain a ferry, either of steam power or otherwise, across any of the streams

erected or constructed, said director may contract with the owner or owners of such fishing right or easement for settlement for damages to the same, but in case they cannot agree, proceedings shall be had as provided in Section 14 of this act; such bridge shall be so constructed as not to interfere with the free navigation of said creek or river."

The Act of May 25, 1887, P. L. 268, added the words "or ferry" after the word "bridge" wherever the latter word occurred in Clause 1. The Act of May 25, 1887, however, took as the basis of amendment the Act of April 29, 1874, and omitted the following words added by the amending Act of April 17, 1876, "or whenever any fishing or other easement is alleged to exist at, upon, or about the place, where such wharf is about to be erected or constructed, said directors may contract with the owner or owners of such fishing right or easement for settlement of damages for the same." The word "wharf," which had been added in Clause 1 by the Act of 1876, was omitted in the Act of 1887.

Clause 2 was re-enacted without change by the Act of April 17, 1876, P. L. 34, but was amended by the Act of May 6, 1887, P. L. 92, so as to read as follows:

"Clause 2. TOLL.—When the said corporation shall have erected and completed a bridge over any creek or river, under the authority of this act, the property thereof shall be vested in the said corporation, and it shall have the power to erect gates and to demand and receive tolls for crossing said bridge, at such rates as the president and directors thereof shall, from time to time, determine, not exceeding the rates following, namely: For every score of sheep or swine, eight cents; for every score of horned or muley cattle, twenty-five cents; for every mule or horse, driven or led, five cents; for every horse or mule, ladened or unladened, with rider, five cents; for every two-wheeled vehicle and one horse, six cents; the same with two horses, ten cents; for every four-wheeled vehicle, with one horse, ten cents; for every four-wheeled vehicle, with two horses, fifteen cents; for either of the last named vehicles, with four horses, twenty cents; for every foot passenger, two cents: Provided that any bridge, not wholly, or in part, within the limits of any city of the first or second class within this Commonwealth, that shall hereafter be constructed or reconstructed, and the cost whereof shall be increased beyond the minimum by reason of the demands and requirements of navigation, the corporation owning the same may demand and receive tolls, not exceeding fifty per centum in excess of the above rates in any case, where such increased rates do not produce a net revenue in excess of six per centum per annum upon the capital stock of such corporation: Provided further, that no such increased tolls shall be charged in any case until the same shall have been authorized by the Court of Quarter Sessions of the proper county, or if a bridge be located over a stream

of waters of this Commonwealth, subject to the right of prior occupants within three thousand feet of the point at which the proposed ferry is to be located, and may take and receive such tolls and freights for the passage of persons, vehicles, animals, and freight as may be appointed by them, subject to the approval of the Court of Quarter Sessions of the proper county, which court is required to examine the toll-sheet submitted by any such corporation and approve the same, or lessen or increase the same as seems just and proper.[42]

TELEGRAPH COMPANIES.

Sec. 33. The charter for the incorporation of a company to maintain a telegraph line shall, in addition to what is hereinbefore required, also state—

dividing counties, then by the Court of Quarter Sessions of the county wherein the office of the company may be situated, and in all cases said corporations shall cause to be put up and kept in some conspicuous place at the gate of said bridge a list of the rates of toll: And provided further, that all children going to and from school shall have free passage."

Clauses 3, 4, and 5 were not changed by later legislation. Clause 6, as it appeared in the Act of 1874, was omitted in the Act of April 17, 1876, and another Clause 6 was added, which reads as follows:

"Clause 6. No wharf company within the jurisdiction of the board of wardens, for the port of Philadelphia, shall have the right to exercise its corporate franchises under this act until it has been licensed by said board of port wardens, and complied with the provisions of an act entitled 'An act to establish a board of wardens for the port of Philadelphia, and for the regulation of pilots and pilotages, and for other purposes therein mentioned,' approved March 29, 1803, and its supplements."

For other legislation relating to bridge and ferry companies not directly affecting the Act of 1874 see Chapter LX, FERRY, WHARF, AND BRIDGE COMPANIES.

[42] Section 32 was amended by the Act of April 17, 1876, Sec. 8, P. L. 36, so as to read as follows:

"Any ferry company incorporated as aforesaid, shall have the right and power to erect and maintain a ferry, either of steam power or otherwise, across any of the streams or waters of this Commonwealth, subject to the right of prior occupants; and any ferry or wharf company may take and receive such charges for occupancy, storage, and use, and such tolls and freights for the passage of persons, vehicles, animals, and freight as may be appointed by them, subject to the approval of the Court of Quarter Sessions of the proper county, which court is required to examine the schedule of charges and toll-sheet submitted by any such corporation, and approve the same or lessen or increase the same as seems just and proper."

I. The general route of the line of telegraph.

II. The points to be connected.

Clause 1. Such corporation shall be authorized, when incorporated as hereinbefore provided, to construct lines of telegraph along and upon any of the public roads, streets, lands, or highways, or across any of the waters within the limits of this State, by the erection of the necessary fixtures, including posts, piers, or abutments for sustaining the cords or wires of such lines, but the same shall not be so constructed as to incommode the public use of said roads, streets, or highways, or injuriously interrupt the navigation of said waters; and this act shall not be so construed as to authorize the construction of a bridge across any of the waters of this State.

Clause 2. In all cases where the parties cannot agree upon the amount of damages claimed, or by reason of the absence or legal incapacity of the owner or owners no such agreement can be made for the right to enter upon lands or premises for the purposes named in this section, the company shall tender a bond, or have the same filled in the manner provided in the forty-first section of this act, and proceedings shall be had as therein set forth.

Clause 3. The said telegraphic corporation shall have the right to connect its lines of telegraph with any other line operating within this State; and it shall be the duty of any corporation or person owning any other telegraph line doing business within this State, to permit such connection, and to receive dispatches from and for other telegraph lines and corporations, and from and for any individual, and on payment of their usual charges to individuals for transmitting dispatches, as established by the rates and regulations of such telegraph line, to transmit the same with impartiality and good faith, under penalty of one hundred dollars for every neglect or refusal so to do, to be sued for as debts of like amount are by law recoverable, and to be recovered with costs of suit in the name and for the benefit of the person or persons sending or desiring to send such dispatch.

Clause 4. No such telegraph company shall be consolidated with or merged in any other company owning a competing line of telegraph, nor shall the stock or bonds of any such telegraph company, to an amount sufficient to control the same, be held or owned by any company owning a competing

line of telegraph, nor shall any company owning a competing line acquire, by purchase or otherwise, any other competing line of telegraph.

Clause 5. That the charge by all telegraph companies organized under this act, and those accepting the provisions thereof, for the transmission of any telegraphic dispatch, shall include the charge for the delivery thereof, and no extra or additional charge shall be made for such delivery.[43]

[43] The Act of May 1, 1876, P. L. 90, which is entitled an act supplementary to the Act of April 29, 1874, provided as follows:

"Section 1. Corporations of the second class may be formed and created in the manner provided for by the act to which this is a supplement, and with all the rights and powers therein granted, for the purpose of constructing, maintaining, and leasing lines of telegraph for the private use of individuals, firms, corporations, municipal, and otherwise, for general business, and for police, fire alarm, or messenger business, or for the transaction of any business in which electricity over or through wires may be applied to any useful purpose.

"Section 2. The business of such corporation may be wholly within or partly within and partly without the limits of any city, borough, or township in this State, or partly in any other State or States.

"Section 3. That in lieu of the requirements of the first paragraph of the thirty-third section of the act to which this is supplementary, approved April 29, 1874, the charter for the incorporation of companies under the provisions of this act shall state:

"First. In what counties in this State it is proposed to carry on business.

"Second. In what other States it is proposed to carry on business.

"Section 4. That before the exercise of any of the powers given under this act, application shall be first made to the municipal authorities of the city, town, or borough in which it is proposed to exercise said powers, for permission to erect poles, or run wires on the same, or over, or under any of the streets, lanes, or alleys of said city, town, or borough, which permission shall be given by ordinance only, and may impose such conditions and regulations as the municipal authorities may deem necessary: Provided, that cities of the first class shall be exempted from the provisions of this act."

The Act of June 25, 1885, P. L. 164, amended Section 4 of the Act of May 1, 1876, P. L. 90, so as to omit the proviso relating to cities of the first class.

The Act of June 5, 1883, P. L. 84, is entitled "An act to escheat to the Commonwealth the telegraph lines and property of telegraph corporations, associations, and companies which violate the provisions of the Constitution, prohibiting the consolidation with or the holding of a controlling interest in the stock or bonds of a competing line of telegraph, or the acquisition, by purchase or otherwise, of any other competing line

WATER AND GAS COMPANIES.

Sec. 34. Companies incorporated under the provisions of this statute for the supply of water to the public, or for the manufacture and supply of gas, or the supply of light or heat to the public by any other means, shall, unless otherwise provided by this act, from the date of the letters-patent creating the same, have the powers and be governed, managed, and controlled as follows:

Clause 1. Where any such company shall be incorporated as a gas company, or company for the supply of heat or light to the public, it shall have authority to supply with gas light the borough, town, city, or district where it may be located, and such persons, partnerships, and corporations residing therein, or adjacent thereto, as may desire the same, at such price as may be agreed upon, and also to make, erect, and maintain therein the necessary buildings, machinery, and apparatus for manufacturing gas, heat, or light from coal or other material, and distributing the same, with the right to enter upon any public street, lane, alley, or highway, for the purpose of laying down pipes, altering, inspecting, and repairing the same, doing as little damage to said streets, lanes, alleys, and highways, and impairing the free use thereof as little as possible, and subject to such regulations as the councils of said borough, town, city, or district may adopt in regard to grades, or for the protection and convenience of public travel over the same.

Clause 2. Where such company shall be incorporated for the supply of water, they shall have power to provide, erect, and maintain all works and machinery necessary or proper for raising and introducing into the town, borough, city, or district where they may be located, a sufficient supply of pure water, and for that purpose may provide, erect, and maintain all proper buildings, cisterns, reservoirs, pipes, and conduits, for the reception and conveyance of water; and they are

of telegraph, prescribing the method by which the same may be done and regulating the proceedings thereunder." This act did not refer in express terms to the Act of April 29, 1874. It consists of six sections, all of which are fully quoted in Chapter LXXIX, TELEGRAPH COMPANIES.

The Act of June 2, 1891, Sec. 1 and 2, P. L. 170, provided a remedy for the recovery of damages caused by the construction of a telegraph or telephone line. See Sections 1126 and 1127, *supra*.

authorized and empowered by themselves, their agents, engineers and workmen, and with their tools, carts, wagons, beasts of draught or burden, to enter upon such lands and enclosures, streets, lanes and alleys, roads, highways and bridges, as may be necessary to occupy, or to obtain materials for the construction of said works, and to occupy, ditch, and lay pipes through the same, and the same from time to time to repair, subject to such regulations in regard to streets, roads, lanes, and other highways, as is provided in the foregoing section for gas companies; and if any injury be done to private property, the said company shall make compensation therefor in the manner provided in the forty-first section of this act.

Clause 3. The right to have and enjoy the franchises and privileges of such incorporation within the district or locality covered by its charter shall be an exclusive one; and no other company shall be incorporated for that purpose until the said corporation shall have from its earnings realized and divided among its stockholders, during five years, a dividend equal to 8 per centum per annum upon its capital stock: Provided, that the said corporations shall at all times furnish pure gas and water, and any citizen using the same may make complaint of impurity or deficiency in quantity, or both, to the Court of Common Pleas of the proper county, by bill filed, and after hearing the parties touching the same, the said court shall have power to make such order in the premises as may seem just and equitable, and may dismiss the complaints or compel the corporation to correct the evil complained of.

STORAGE AND TRANSPORTATION OF WATER.

Clause 4. Before any such water company shall proceed to occupy any land or enclosure, or to obtain and use any material therefrom for the purpose mentioned in this section, it shall be lawful for them to agree with the owner or owners thereof for the purchase of so much thereof as may be necessary, or as to the amount of injury sustained thereby; but in case they cannot agree, proceedings shall be had as provided in Section 41 of this act: Provided, that companies organized for any of the purposes set forth in the eighteenth clause of the second section of this act, and not having for their object the supplying of any village, borough, or city with water,

shall have all the rights, privileges, and powers conferred by the said eighteenth clause; and the right to take lands, waters, or rivulets shall be exercised in the manner provided in the forty-first section of this act.

Clause 5. If any person or persons shall open a communication into the water or gas main, or other pipe of said company, without authority from the inspector or other authorized agent of said company, or shall let on the water or gas, after either have been stopped by order of said inspector or authorized agent of said company for repairs or any other cause or purpose, or shall put up any hydrants, pipes, or burners, in addition to those originally put up and inspected, and introduce into them water and gas, as the case may be, without authority as aforesaid, he, she, or they shall be subject to a penalty of not less than ten, nor more than one hundred dollars, recoverable before any alderman or justice of the peace of the proper county, as debts of like amount are by law recoverable, one-half to be paid to the informer, and one-half to the company.

Clause 6. If any person shall willfully or maliciously do, or cause to be done, any act or acts whatever, whereby any building, construction, reservoir, or works of said company, or any water or gas pipe, gas post, burner or reflector, or any matter or thing appertaining to the same shall be stopped or obstructed, injured, contaminated, or destroyed, the person or persons so offending shall be considered guilty of a misdemeanor, and may therefor be indicted in the Court of Quarter Sessions of the proper county, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars, or be imprisoned not exceeding one year, or both, at the discretion of the court: Provided, that such criminal prosecution shall not in any way impair the right of said company to a full compensation in damages by civil suit.

Clause 7. It shall be lawful at any time after twenty years from the introduction of water or gas, as the case may be, into any place as aforesaid, for the town, borough, city, or district into which the said company shall be located, to become the owners of said works, and the property of said company, by paying therefor the net cost of erecting and maintaining the same, with interest thereon, at the rate of 10 per centum per annum, deducting from said interest all dividends therefore declared: Provided, that nothing in this section

contained shall authorize a company incorporated under the provisions of this act to construct gas or water works within the limits of any municipality, when gas or water works shall have been constructed by said municipality, without the lawful consent of the corporate authorities thereof: And provided further, that the Court of Common Pleas of the proper county shall have jurisdiction and power upon the bill or petition of any citizen using the gas or water of any of said companies to hear, inquire, and determine as to the charges thereof for gas or water so furnished, and to decree that the said bill be dismissed, or that the charges shall be decreased, as to the said court may seem just and equitable, and to enforce obedience to their decrees by the usual process.[44]

[44] The preliminary paragraph of Section 34 was amended by the Act of June 2, 1887, Sec. 1, P. L. 311, so as to read as follows:

"Companies incorporated under the provisions of this statute for the supply of water to the public, or for the manufacture and supply of light, heat, and fuel, or any of them, by any process of manufacture, shall, unless otherwise provided by this act, from the date of the letters-patent creating the same, have the powers and be managed, governed, and controlled as hereinafter provided."

The Act of June 2, 1887, Sec. 4, P. L. 313, provided that "corporations of the character provided for herein shall be entitled to have a capital stock not exceeding five million dollars." The Act of May 9, 1889, P. L. 181, provides that the capital stock of water companies shall not exceed two million dollars.

The Act of May 25, 1887, P. L. 269, which is a supplement to the Act of April 29, 1874, provides as follows:

"Corporations created under and by virtue of the said act for the purpose of supplying water to the public in cities of the first and second class, shall have the right to increase the amount of their capital, from time to time, to such amount as shall be found requisite and exigible for the purposes thereof: Provided, that the amount of capital stock so authorized shall not exceed twenty millions of dollars."

Clause 1 of Section 34 was amended by the Act of June 2, 1887, Sec. 2, P. L. 311, so as to read as follows:

"Where any such company shall be incorporated for the supply of heat, light, and fuel, or any of them, by any process of manufacture, it shall have authority to supply such heat, light, or fuel, or any of them, to the territory named in its articles of association (which shall never cover more than a single county), and to such persons, partnerships, and corporations residing therein, or adjacent thereto, as may desire the same, at such prices as may be agreed upon, and shall have the power of eminent domain to appropriate property, so far as may be necessary, to enable it to acquire that which is necessary for its plant (whether the same

REAL ESTATE COMPANIES.

Sec. 35. The capital stock of corporations for the purchase and sale of real estate shall consist in the aggregate, at no time, of more than two hundred thousand dollars, and be

be in the county named in its articles of association or elsewhere) and for its lines of distribution; and the power also to make, erect, and maintain the necessary building, machinery, and apparatus for producing heat, light, and fuel, or any of them, and to distribute the same; with the right to enter upon any public street, lane, alley, or highway for such purpose, to alter, inspect, and repair its system of distribution, doing as little damage to said streets, lanes, alleys, and highways, and impairing the free use thereof as little as practicable, and subject to such regulations as the councils of any borough or city, whose highways may be occupied, shall adopt in regard to grades, or for the protection and convenience of public travel over the same: Provided, that no company, which may now or hereafter be incorporated under the provisions of this act, shall enter upon any street in any city or borough of this Commonwealth, until after the consent to such entry of the councils of the city or borough, in which said street may be located, shall have been obtained. And the said right of eminent domain shall be exercised in the mode prescribed and according to the provisions of the forty-first section of the act, with this proviso, however, that where any such company shall use its system of distribution for the conveyance of gas for any of the purposes aforesaid at a greater pressure than four ounces per square inch of pressure, or where the gas manufactured shall contain more than 10 per cent. of carbonic oxide, such system of distribution shall be provided with suitable appliances for preventing or taking up any leakage, so that danger to life, property, and vegetation may be avoided."

Clause 2 of Section 34 was amended by the Act of May 16, 1889, Sec. 2, P. L. 227, so as to read as follows:

"Where such companies shall be incorporated for the supply of water to the public, or for storing and transportation or supply of water and water power for commercial and manufacturing purposes, they shall have power to provide, erect, and maintain all works and machinery necessary or proper for raising and introducing into the town, borough, city, or district where they may be located a sufficient supply of pure water, or water and water power as aforesaid, and for that purpose may provide, erect, and maintain all proper buildings, cisterns, reservoirs, pipes, and conduits for the reception and conveyance of water, or water power, and it shall have power to appropriate so much of the water from the rivers, creeks, canal water rights and easements, within or without the limits of the city, borough, or place in which said company may by its charter be located, as may be necessary for its purposes, and all damage done thereby shall be ascertained, recovered, and paid as provided for in the forty-first section of the act to which this is a supplement; and it is further authorized and empowered by itself, its agents, engineers, and work-

divided into shares of fifty dollars each; the said corporations shall have the right to purchase real estate, and may improve the same and sell the same in such parts and parcels and on

men, and with its and their tools, carts, wagons, beasts of draught or burden, to enter upon such lands and enclosures, streets, lanes, alleys, roads, and highways and bridges as may be necessary to occupy or to obtain materials for the construction of said works, and to occupy, ditch, and lay pipes through the same, and the same from time to time to repair, subject to such regulations in regard to streets, roads, lanes, and other highways, and impairing the free use thereof as little as possible, and subject to such regulations as the councils of said borough, town, city, or district may adopt in regard to grades or for the protection and convenience of public travel over the same, and if any injury be done to private property the said company shall make compensation therefor in the manner provided for in the forty-first section of this act: Provided, that this act shall not apply to private spring or private water supplies."

Clause 3 of Section 34 was amended by the Act of June 2, 1887, Sec. 3, P. L. 312, so as to read as follows:

"The right to have and enjoy the franchise and privileges of such corporation for the manufacture of gas for light only shall be an exclusive one, within the district or locality covered by its charter; and no other company shall be incorporated for the manufacture of gas to supply light only to the public until the said corporation shall have, from its earnings, realized and divided among its stockholders during five years, a dividend equal to 8 per centum per annum upon its capital stock: Provided, that said corporations shall at all times furnish pure gas and water, and any citizen using the same may make complaint of impurity or deficiency in quantity, or both, to the Court of Common Pleas of the proper county, by bill filed, and after hearing the parties touching the same, the said court shall have power to make such order in the premises as may seem just and equitable, and may dismiss the complaints, or compel the corporation to correct the evil complained of."

Section 3 of the Act of June 2, 1887, P. L. 312, was amended by the Act of June 24, 1895, P. L. 267, so as to add the following:

"And provided that the right to have and enjoy the franchises and privileges of such corporation for the manufacture of gas for light only shall not be an exclusive one in any case of a corporation existing prior to April 29, 1874, which has accepted, or hereafter may accept, the provisions of the Act of April 29, 1874, entitled 'An act to provide for the incorporation and regulation of certain corporations,' or of said act and its supplements."

The Act of June 10, 1881, Sec. 1, P. L. 112, extended the proviso in Section 3 of the Act of June 2, 1887, P. L. 312, to all gas and water companies incorporated under any of the laws of this Commonwealth. The Act of June 10, 1881, contained two other sections, which are as follows:

"Section 2. That all proceedings authorized by said proviso shall be in

such terms as to time of payment as they may determine: Provided, that the quantity of real estate held at any one

accordance with the rules of equity practice now existing: Provided, that all lawful fees and costs accruing in such proceeding shall be taxed and allowed as provided by the equity fee bill in the respective court and paid by the unsuccessful party."

"Section 3. Either party may appeal to the Supreme Court as in cases in equity."

The Act of March 24, 1877, P. L. 39, provided as follows: "It shall be lawful for any gas company or water company incorporated under the provisions of the Act of the General Assembly of this Commonwealth, entitled 'An act to provide for the incorporation and regulation of certain corporations,' approved April 29, 1874, to borrow any sums of money not exceeding in the aggregate one-half of the capital stock of such company paid in, at a rate of interest not exceeding amounts now allowed by law, and issue bonds therefor with coupons or interest warrants attached, and secure the payment of such bonds and interest warrants by a mortgage to a trustee or trustees of all its real and personal property, rights, privileges, and franchises."

Clause 4 of Section 34 was amended by the Act of June 12, 1879, P. L. 177, so as to read as follows:

"Clause 4. Before any such water company shall proceed to occupy any land or enclosure, or to obtain and use any material therefrom, for the purpose mentioned in this section, it shall be lawful for them to agree with the owner or owners thereof for the purchase of so much thereof as may be necessary, or as to the amount of injury sustained thereby; but in case they cannot agree, proceedings shall be had as provided in Section 41 of this act: Provided, that companies organized for any of the purposes set forth in Clause 18 of the second section of this act, whether such companies shall have been organized under any special Act of Assembly or under the general acts, in said Clause 18 enumerated, and not having for their object the supplying of any village, borough, or city with water, shall have all the rights, privileges, and powers conferred by the said Clause 18, and the right to take lands, waters or rivulets shall be exercised in the manner provided in the forty-first section of this act."

The Act of May 26, 1893, P. L. 158, provided as follows:

"Section 1. Whenever any water company incorporated for the purpose of supplying water to the public shall have found, or shall find, it necessary in storing water to occupy and flow with water portion of any turnpike or any public road in this Commonwealth, the said company shall cause the same to be reconstructed forthwith, at their own proper expense, on a favorable location, to be approved by the Court of Quarter Sessions of the proper county, and in as perfect a manner as the original road, and are authorized to condemn land for that purpose whenever an agreement as to price cannot be had with the owners.

"Section 2. That any such water company shall be and is hereby em-

time in cities or boroughs, shall not exceed fifty acres, and outside thereof shall not exceed three thousand acres.

powered to acquire and hold by purchase, or condemnation, such lands along and contiguous to streams of water, or reservoirs from which water is taken for public use, as may be necessary to preserve them from contamination: Provided, that no land shall be taken for the uses mentioned in this act until just compensation shall have been made for property taken, injured, or destroyed, which shall be paid or secured before such taking, injury, or destruction: And provided further, that any owner of land along said streams shall have the use of the water for farming and domestic purposes, with free ingress and egress at all times to such streams.

"Section 3. The damage incurred in changing the location of any turnpike or public road, as authorized by the first section of this act, and in acquiring lands to preserve water supply from contamination, as authorized by the second section of this act, shall be ascertained and paid by such water company in the same manner as is provided for in regard to the taking of lands, waters, materials, property, and franchises, for the public purposes of such water company, and no lands, property, or franchises shall be taken for the uses mentioned in this act until just compensation shall have been paid or secured therefor."

The Act of July 2, 1895, P. L. 425, provided as follows:

"Corporations organized, or hereafter to be organized, under the laws of this State for the purpose of supplying water power to the public, and other corporations owning or controlling water power, may develop electric power for commercial purposes by means of water power, and shall have authority to supply current and power to the public, individuals, firms, and corporations at such prices as may be agreed upon, and shall have authority to make, erect, and maintain the necessary buildings, machinery, and apparatus for developing power and current, and to distribute the same to any place or places, with the right to enter upon any public road, street, lane, alley, or highway for such purposes, and to alter, inspect, and repair its system of distribution: Provided, that no such company shall enter upon any street, or alley, in any city, borough, or township of this Commonwealth, until after the consent to such entry of the councils of the city, or borough, or supervisors of the township in which such street or alley may be located shall have been obtained."

The Act of July 2, 1895, P. L. 432, provided as follows:

"Corporations heretofore or hereafter incorporated under the Act of Assembly, entitled 'An act to provide for the incorporation and regulation of certain corporations,' approved April 29, 1874, and the supplements thereto, for the supply, storage, or transportation of water and water power for commercial and manufacturing purposes, be and the same are hereby authorized and empowered to determine the character, design, and construction of the works, and the use to be made of the water and water power of such companies, in order that the same may be supplied

SAFE DEPOSIT COMPANIES.

And safe deposit companies shall have power to receive upon deposit for safe-keeping jewelry, plate, stocks, bonds, notes and valuable property of every kind, upon terms to be prescribed by the by-laws of such corporation, which by-laws shall, at all times, be posted up in the place or places of business of such corporations.[45]

to the public to the best advantage, and by themselves, their agents, engineers, and workmen, cause to be located, constructed, maintained, repaired and operated under the law and supplements to which this is a further supplement, the said works and all machinery, dams, buildings, cisterns, races, canals, waterways, reservoirs, pipes, conduits, lines, plants, apparatus, fixtures, and appliances deemed necessary, requisite, and proper for said purposes, and it shall and may be lawful for such corporations from time to time to contract with any individual or corporation of this or any other State for the construction, operation, use, and maintenance of their works, or any part thereof, as aforesaid, and to mortgage their said property, real, personal, and mixed, and franchises to any person or corporation of this State or elsewhere, either directly or as trustee, to secure the payment of such indebtedness as may be incurred or created for the purpose of constructing and erecting the said works, or as a guaranty for the faithful performance of contracts and covenants on the part of such water and water power company to be performed, including the guaranty of the payment of the bonds and interest thereon of any other corporation, party to such contract, and the stock in any company incorporated for the purposes named in this act may be owned and held by corporations of this or other States of the United States.

[45] The portion of Section 35 relating to real estate companies was amended by the Act of April 17, 1876, Sec. 9, P. L. 36, so as to read as follows:

"The capital stock of corporations for the purchase and sale of real estate, or for holding, leasing, and selling real estate, and for maintaining or erecting and maintaining walls or banks for the protection of low-lying lands, shall consist in the aggregate at no time of more than six hundred thousand dollars, to be divided into shares of fifty dollars each; the said corporations shall have the right to purchase, take, hold, and enjoy real estate, in fee simple, on lease or upon ground rent, as well as that already purchased or acquired as that hereafter purchased or acquired, to improve, lease, mortgage, and sell the same in such parts and parcels, and on such terms as to time of payment as they may determine, and to convey the same to the purchaser, in fee simple or for any less estate, or upon ground rents, and in like manner to mortgage, sell, convey or extinguish any ground rent reserved out of any real estate so sold; and may maintain or erect and maintain walls or banks of stone, earth, or other material for the protection of meadow and low-lying lands from the

HOTEL, BOARDING, OPERA, AND MARKET HOUSES.

Sec. 36. Companies incorporated under the provisions of this act, or similar companies already incorporated and accepting the same, for the establishment and maintenance of an hotel or boarding house, or opera and market house, or both, or either, shall have the right and power to take, receive, hold, and enjoy, either by conveyance, in fee simple, or for any less estate, or upon ground rent, or for both, all the lots of land, premises, and appurtenances necessary to the successful maintenance and carrying on of such business; shall have the power to execute the necessary and proper covenant for securing the payment of ground rents on any of such lands and premises; shall have power to sell and convey, let, or lease all or any parts of said lots or the tenements and buildings thereon erected, either for cash or on ground rent, or partly for cash and partly on ground rent; and shall have power to erect such buildings, fixtures, and appurtenances, and procure such furniture and equipments as may be necessary for the success of its business; and the said corporations may borrow money in the manner provided in Section 13 of this act to an amount equal to the capital stock of the company paid up, and secure the same by mortgage upon the said lots, buildings and fixtures and appurtenances.[46]

encroachments of water: Provided, that the quantity of real estate held at any one time, in cities or boroughs, shall not exceed five hundred acres, and outside thereof shall not exceed ten thousand acres, but any number of acres desired, may be protected from encroachment by water."

The portion of the section relating to safe deposit companies was reenacted by the Act of 1876, without change.

[46] Section 36 was amended by the Act of April 17, 1876, Sec. 10, P. L. 36, so as to read as follows:

"Companies incorporated under the provisions of this act, or similar companies already incorporated and accepting the same, for holding, leasing, and selling real estate, or for the establishment and maintenance of a hotel or boarding-house, or opera and market-house, hotel and droveyard, or both, any or either, shall have the right and power to take, receive, hold, and enjoy, either by conveyance, [in] fee simple or for any less estate, or upon ground rent, or for both, all the buildings, lots of lands, premises, [and] appurtenances necessary to the successful maintenance and carrying on of such business; shall have the power to execute the necessary and proper covenant for securing the payment of ground rent on any of such lands and premises; shall have power to sell and

BUILDING AND LOAN ASSOCIATIONS.

Sec. 37. Building and loan associations incorporated under the provisions of this act shall have the powers, and from the date of the letters-patent creating the same, when not otherwise provided in this act, be governed, managed, and controlled as follows:

Clause 1. They shall have the power and franchise of loaning or advancing to the stockholders thereof the moneys accumulated from time to time, and the power and right to secure the re-payment of such moneys, and the performance of the other conditions upon which the loans are to be made, by bond and mortgage or other security, as well as the power and right to purchase or erect houses, and to sell, convey, lease, or mortgage the same at pleasure to their stockholders or others for the benefit of their stockholders, in such manner, also, that the premiums taken by the said associations, for the preference or priority of such loans shall not be deemed usurious, and so, also, that in case of non-payment of instalments, premiums, or interest by borrowing stockholders, for six months, payment of principal, premiums, and interest, without deducting the premium paid, or interest thereon, may be enforced by proceeding on their securities according to law.

Clause 2. The capital stock of any corporation created for such purposes by virtue of this act shall at no time consist in the aggregate of more than one million dollars, to be divided into shares of such denomination, not exceeding five hundred dollars each, and in such number as the corporators may, in the application for their charter, specify: Provided, that the capital stock may be issued in series, but no such series shall at any issue exceed in the aggregate five hundred thousand dollars, the instalments on which stock are to be paid at such time and place as the by-laws shall appoint;

convey, let or lease, all or any parts of said lots, or the tenements and buildings thereon erected, either for cash or on ground rent, or partly for cash and partly on ground rent, and shall have power to hold or erect such buildings, fixtures, and appurtenances, and procure such furniture and equipments as may be necessary for the success of its business; and the said corporation may borrow money, in the manner provided in Section 13 of this act, to an amount equal to the capital stock of the company paid up, and secure the same by mortgage upon the said lots, buildings, and fixtures and appurtenances."

no periodical payment of such instalments to be made exceeding two dollars on each share, and said stock may be paid off and retired as the by-laws shall direct; every share of stock shall be subject to a lien for the payment of unpaid instalments and other charges incurred thereon under the provisions of the charter and by-laws, and the by-laws may prescribe the form and manner of enforcing such lien; new shares of stock may be issued in lieu of the shares withdrawn or forfeited; the stock may be issued in one or in successive series, in such amount as the board of directors or the stockholder may determine; and any stockholder wishing to withdraw from the said corporation, shall have power to do so by giving thirty days' notice of his or her intention to withdraw, when he or she shall be entitled to receive the amount paid in by him or her, less all fines and other charges; but after the expiration of one year from the issuing of the series, such stockholder shall be entitled, in addition thereto, to legal interest thereon: Provided, that at no time shall more than one-half of the funds in the treasury of the corporation be applicable to the demands of withdrawing stockholders without the consent of the board of directors, and that no stockholder shall be entitled to withdraw whose stock is held in pledge for security; upon the death of a stockholder, his or her legal representatives shall be entitled to receive the full amount paid in by him or her and legal interest thereon, first deducting all charges that may be due on the stock; no fines shall be charged to a deceased member's account from and after his or her decease, unless his legal representatives of such decedent assume the future payments on the stock.

Clause 3. That the number, titles, functions, and compensation of the officers of any such corporation, their terms of office, the times of their elections, as well as the qualifications of electors, and the ratio and manner of voting, and the periodical meetings of the said corporations, shall be determined by the by-laws when not provided by this act.

Clause 4. That the said officers shall hold stated meetings, at which the money in the treasury, if over the amount fixed by charter as the full value of a share, shall be offered for loan in open meeting, and the stockholder who shall bid the highest premium for the preference or priority of loan, shall be entitled to receive a loan of not more than the amount fixed by charter as the full value of a share for each share

of stock held by such stockholder: Provided, that a stockholder may borrow such fractional part of the amount fixed by charter as the full value of a share, as the by-laws may provide; good and ample security, as prescribed by the by-laws of the corporation, shall be given by the borrower to secure the re-payment of the loan; in case the borrower shall neglect to offer security, or shall offer security that is not approved by the board of directors, by such time as the by-laws may prescribe, he or she shall be charged with legal interest, together with any expenses incurred, and the loss in premium, if any, on a re-sale, and the money may be re-sold at the next stated meeting; in case of non-payment of instalments or interest by borrowing stockholders, for the space of six months, payment of principal and interest, without deducting the premium paid or interest thereon, may be enforced by proceeding on their securities according to law.

Clause 5. That a borrower may repay a loan at any time, and in case of the repayment thereof, before the expiration of the eighth year, after the organization of the corporation, there shall be refunded to such borrower one-eighth of the premium paid for every year of the said eight years then unexpired: Provided, when the stock is issued in separate series the time shall be computed from the date of the issuing the series of stock on which the loan was made.

Clause 6. That no premiums, fines, or interest on such premiums, that may accrue to the said corporation, according to the provisions of this act, shall be deemed usurious, and the same may be collected as debts of like amount are now by law collected in this Commonwealth.

Clause 7. That no corporation or association created under this act shall cease or expire from neglect on the part of the corporators to elect officers at the time mentioned in their charter or by-laws, and all officers elected by such corporation shall hold their offices until their successors are duly elected.

Clause 8. Any loan or building association incorporated by or under this act, is hereby authorized and empowered to purchase at any sheriff's or other judicial sale, or at any other sale, public or private, any real estate, upon which such association may have or hold any mortgage, judgment, lien, or other incumbrance, or ground rent, or in which said association may have an interest, and the real estate so pur-

chased, or any other that such association may hold or be entitled to at the passage of this act, to sell, convey, lease, or mortgage at pleasure, to any person or persons whatsoever; and all sales of real estate heretofore made by such associations to any person or persons not members of the association so selling, are hereby confirmed and made valid.

Clause 9. All such corporations shall have full power to purchase lands and to sell and convey the same, or any part thereof, to their stockholders or others in fee simple, with or without the reservation of ground rents, but the quantity of land purchased by any one of said associations hereafter incorporated shall not, in the whole, exceed fifty acres, and in all cases the lands shall be disposed of within ten years from the date of the incorporation of such associations respectively.

Clause 10. That all land and building associations are hereby authorized to make sale of and assign or extinguish to any person or persons the ground rents created as aforesaid.[47]

[47] The preliminary paragraph of Section 37 has not been changed by later legislation.

The Act of April 10, 1879, P. L. 16, did not in express terms refer to the Act of April 29, 1874, Section 1, of the Act of 1879 provided as follows:

"It shall be lawful for any mutual savings fund, or building and loan association, now incorporated or hereafter to be incorporated, in addition to dues and interest, to charge and receive the premium or bonus bid by a stockholder for preference or priority of right to a loan in periodical instalments; and such premium or bonus so paid in instalments shall not be deemed usurious, but shall be taken to be a payment as it falls due in contradistinction to a premium charged and paid in advance; and in so far as said premium or bonus so charged and paid, in addition to dues and interest, shall be in excess of two dollars for each periodical payment, the same shall be lawful, any law, usage, or custom to the contrary notwithstanding. It shall also be lawful for any mutual savings fund, or building and loan association to charge and deduct interest in advance, in lieu of premiums for preference or priority or right to a loan: Provided, that the certificate of incorporation of each association hereafter to be incorporated, and the certificate provided in Section 9 of this act for those heretofore incorporated, shall set forth whether the premiums or bonus bid for the prior right to a loan shall be deducted therefrom in advance or paid in periodical instalments, or whether interest in advance shall be deducted from the loan in lieu of premium or bonus."

The portion of Clause 2 of Section 37 relating to the withdrawal of

IRON OR STEEL COMPANIES.

Sec. 38. Companies incorporated under the provisions of this act for the manufacture of iron or steel, or both, of any other metal, or of any article of commerce from wood or metal, or both, unless otherwise provided by this act, shall,

stockholders was superseded by Sections 2 and 3 of the Act of April 10, 1879, P. L. 16, which are as follows:

"Section 2. Stockholders withdrawing voluntarily shall receive such proportion of the profits of the association or such rate of interest as may be prescribed by the by-laws, any law or usage to the contrary notwithstanding; but payment of the value of stock so withdrawn, shall only be due when the funds now by law applicable to the demand of withdrawing stockholders are sufficient to meet and liquidate the same, and then only in the order of the respective times of presentation of the notices of such withdrawals, which must have been presented in writing at a previous stated meeting, and have been then and there indorsed as to times of presentation by the officer designated by the by-laws of the association.

"Section 3. The by-laws may provide for the involutary withdrawal and cancellation at or before maturity of shares of stock not borrowed on: Provided, that such withdrawal and cancellation shall be *pro rata* among the shares of the same series of stock: And provided further, that not less than legal interest shall be credited and allowed to each share so withdrawn and cancelled."

Clause 3 of Section 37 has not been changed by subsequent legislation.

The last five lines of Clause 4 of Section 37 relating to the enforcement of payment by process has been supplied by the Act of April 10, 1879, Section 5, which is as follows:

"In case of non-payment of instalments of stock, premiums, dues, or interest, by borrowing stockholders, for the space of six months, payment of the same, together with the full principal of the loan, may be enforced by proceeding on their securities according to law; and the money so recovered shall be paid into the treasury of the association for such uses (loans or otherwise) as may be deemed proper by the association; and if the said moneys so recovered, together with the withdrawal value of the shares of such defaulting borrower, shall exceed the amount it would have required, according to the preceding section, to have voluntarily repaid the loan, together with all the expenses incurred by the association, such excess shall be repaid to such defaulting borrower."

Clause 5 has been affected by Section 4 of the Act of April 10, 1879, P. L. 17, which reads as follows:

"A borrower may repay a loan at any time, and in case of the repayment thereof before the maturity of the shares pledged for said loan, there shall be refunded to such borrower (if the premiums, bonus, or interest shall have been deducted in advance), such proportion of the premiums,

from the date of the letters-patent creating the same, have the powers and be governed, managed, and controlled as follows:

Clause 1. Every such corporation may, in the manner prescribed in this act, increase its capital stock to an amount not exceeding five million dollars, and shall have the right to purchase, lease, hold, mortgage, and sell real estate and mineral rights, to prove and open mines, to mine and prepare for market, or for their own use and consumption, coal, iron ore, and other minerals, and to erect and construct furnaces, forges, mills, foundries, manufactories and such other im-

bonus, or advance interest bid, as the by-laws may determine: Provided, that in no case shall the association retain more than one-hundredth of said premium or bonus for each calendar month that has expired since the date of the meeting upon which the loan was made, or if interest in advance, it shall retain only the interest due on the loan up to the time of settlement: And further provided, that such borrower shall receive the withdrawing value of the shares pledged for said loan, and the shares shall revert back to the association."

Clause 6 was modified by Section 6 of the Act of April 10, 1879, P. L. 17, which reads as follows:

"Fines for penalties for the non-payment of instalments of dues, interest, and bonus or premium, shall not exceed 2 per centum per month on all arrearages."

Clauses 7, 8, 9, and 10 of Section 37 have not been changed by later legislation.

The Act of June 25, 1895, P. L. 303, which amended the Act of June 2, 1891, Sec. 1, P. L. 174, is as follows:

"In addition to the corporate powers conferred on building and loan associations by the thirty-seventh section of the Act of April 29, 1874, they shall have the right when a series of stock has matured, or when application for loans by the stockholders thereof shall exceed the accumulations in the treasury, to make temporary loans of such sum or sums of money to meet such demands, not exceeding in the aggregate of such loan at any time 25 per centum of the withdrawal value of the stock issued by said association at a rate of interest less than 6 per centum, and secure the same by interest bearing order, note, or bond as collateral; said loans to be repaid out of the accumulations in the treasury, as soon as sufficient is paid in, and there is no demand therefor by borrowing stockholders."

Other acts relating to building and loan associations, but not in express terms affecting Section 37 of the Act of 1874, are the Act of June 17, 1878, P. L. 214, confirming purchases and sales of land; Acts of May 22, 1883, P. L. 38; April 10, 1879, Sec. 8, P. L. 17; February 11, 1895, P. L. 7, and June 22, 1897, P. L. 178, relating to taxation. These acts are quoted in full in Chapter XLVII.

provements and erections as they may deem necessary, and to manufacture iron and steel, or any other metal, or either thereof, in all shapes and forms, and either of these metals, exclusively or in combination with other metals, or with wood, and to transport all of said articles or any of them to market, and to dispose of the same, and do all such other acts and things as a successful and convenient prosecution of said business may require: Provided, they shall not at any one time have more than ten thousand acres of land within this Commonwealth, including leased lands.

Clause 2. Every such corporation may make and issue bonds, with or without coupons attached, bearing interest not exceeding 6 per centum per annum, and sell, exchange, or otherwise dispose of the same, upon such terms and conditions as they may deem advisable, and such bonds, and the interest thereon, may be secured by a mortgage or mortgages upon the corporate franchises, real and leasehold estate: Provided, they shall not issue bonds for a greater sum than three times the amount of their capital stock paid in.

Clause 3. The president and directors of every such corporation shall annually lay before the stockholders a full and complete statement of the business and affairs of the corporation for the preceding year; and it shall also be their duty to make report to the auditor-general, at such time and in such form as is or may be prescribed by law, of the operations of the corporation, to the end that he may ascertain the amount of tax due by said corporation to the Commonwealth, and such report shall be verified by the oaths or affirmations of the president and treasurer of such corporation; and any such corporation which shall neglect or refuse to report to the auditor-general, according to law, shall be liable to a penalty of five hundred dollars for the use of the Commonwealth, to be sued for and recovered as debts of like amount are or may be by law recoverable.

Clause 4. It shall and may be lawful for any corporation, organized for the purposes named in this section, to appropriate any stream or streams, spring or springs, flowing for the purpose of supplying the same with stream or water owned by such corporation in the vicinity of their works, through or along or rising upon any lands belonging to and power, upon the said corporation filing in the office of the prothonotary of the Court of Common Pleas of the county in

which such works may be located, a draft or drafts showing the stream or streams, spring or springs, which may have been appropriated for the purposes aforesaid; whereupon it shall not be lawful for any other corporation or individual to divert or use the water of any stream or streams, spring or springs, thus appropriated, so as to diminish the usual accustomed and natural flow thereof: Provided, that every corporation thus appropriating any stream or streams, spring or springs, shall, after using the waters of the same for their manufacturing necessities, return the same into the usual and accustomed channel whereby the water of such stream or streams, spring or springs, have heretofore been accustomed to flow off or along the lands of such corporation.

Clause 5. The incorporation of any association of persons for the purposes named in this section shall be held and taken to be of the same force and effect as if the powers and privileges conferred and the duties enjoined had been conferred and enjoined by special act of the legislature, and the franchises granted shall be construed according to the same rules of law and equity as if it had been created by special charter, and no modification or repeal of this act shall affect any franchises obtained under the provisions of the same.

Clause 6. That it shall and may be lawful for any incorporated company of this Commonwealth, or elsewhere, to subscribe and take shares of stock in any company incorporated for the purposes named in this section of this act, or to purchase the bonds or stock, or guarantee the payment of said bonds and the interest thereon, or either principal or interest.

Clause 7. A majority of the stock of any such corporation may be held by persons who are not citizens of this State or of the United States. A majority of its directors may be citizens of another State, or of any foreign country; and it may have an office at any place without the State, at which the by-laws of the corporation may authorize the same meetings of stockholders and directors may be held, and any business of the corporation transacted, but it shall also keep an office within the county in which its principal business in this State is transacted, and an officer of the company there, upon whom service of process may be made; and the property and stock of such corporation shall be at all times liable to taxation under the laws of this Commonwealth. Corporations for any of the purposes named in this section, heretofore

created by any special or general law of this Commonwealth, on accepting the provisions of the Constitution, shall be entitled to all the privileges and powers conferred by this act upon such corporations to be hereafter created.

Clause 8. That the stockholders of every company incorporated for the purposes named in this section shall only be individually liable for debts due to the laborers, mechanics, or clerks for services, and in that case for no period exceeding six months.

Clause 9. That all laws and parts of laws inconsistent with this section be and the same are hereby repealed, so far as they may relate to or affect any company incorporated under the provisions hereof, or the stockholders of any such company: Provided, this shall not apply to laws imposing taxes upon such corporations.[48]

[48] The preliminary paragraph of Section 38 has not been changed by later legislation.

Clause 1 was amended by the Act of May 24, 1887, P. L. 188, so as to read as follows:

"Every such corporation may, in the manner prescribed in this act, increase its capital stock to an amount not exceeding five million dollars, and shall have the right to purchase, lease, hold, mortgage, and sell real estate and mineral rights, to prove and open mines, and to mine, prepare for market, or for their own use and consumption, coal, iron ore, and other minerals, and to erect and construct furnaces, forges, mills, foundries, manufactories, and such other improvements and erections as they may deem necessary, and to manufacture iron and steel, or any other metal, or either thereof, in all shapes and forms, and either of these metals, exclusively or in combination with other metals, or with wood, and to transport all of said articles or any of them to market, and to dispose of the same, and do all such other acts and things as a successful and convenient prosecution of said business may require: Provided, they shall not at any one time have more than ten thousand acres of land within this Commonwealth, including leased lands, except companies organized to manufacture iron with charcoal, which said companies may hold timber lands not exceeding the quantity that will be required to furnish wood for charcoal for the purposes of said companies, and said lands may be located in not exceeding four contiguous counties."

Clauses 2, 3, 4, and 5 have not been affected by subsequent legislation. It will be observed that the fourth, fifth, and sixth lines of Clause 4 have been misplaced.

Clause 6 was amended by the Act of June 17, 1887, P. L. 412, which reads as follows:

"It shall and may be lawful for any incorporated company of this Com-

MECHANICAL, MINING, QUARRYING, MANUFACTURING, AND OTHER CORPORATIONS.

Sec. 39. Companies incorporated under the provisions of this act for the carrying on of any mechanical, mining, quarrying, manufacturing, or other business, as provided in Clause 18 of the second class, in Section 2 hereof, when not otherwise provided in this act, shall, from the date of the letters-patent creating the same, have the powers, and be governed, managed, and controlled as follows:

Clause 1. That every such corporation may have a capital stock not exceeding five million dollars, and may by a vote of three-fourths of the general stockholders, at a meeting duly called for the purpose, issue two kinds of stock, namely: General stock and special stock; the special stock shall at no time exceed two-fifths of the actual capital of the corporation, and shall be subject to redemption at par, after a fixed time to be stated in the certificates. Holders of such special stock shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed or half-yearly sum or dividend to be expressed in the certificates, not exceeding 4 per centum, and they shall in no event be liable for the debts of the corporation beyond their stock.

monwealth, or elsewhere, to subscribe for and take shares of stock in any company incorporated for the purposes named in said Section 38 of the said 'corporation act of 1874,' or to purchase the bonds or stock of such company or guarantee the payment of said bonds and the interest thereon, or either principal or interest; and it shall and may be lawful for any manufacturing company of this Commonwealth incorporated for the purposes named in said Section 38 of the said corporation act of 1874 to subscribe for, purchase, hold, and dispose of bonds or stocks in any incorporated company of this Commonwealth, or elsewhere, or to guarantee the payment of such bonds and the interest thereon, or either principal or interest: Provided, that this act shall not be construed to permit any corporation named herein to hold a majority of the stock of any railroad company or other common carrier of this Commonwealth, or elsewhere, to subscribe and take shares of stock in any company incorporated for the purposes named in this section of this act, or to purchase the bonds or stock, or to guarantee the payment of said bonds and the interest thereon, or either principal or interest.

Clauses 7, 8, and 9 of Section 38 have not been changed by later legislation.

For powers of foreign iron and steel companies see Acts of June 8, 1893, P. L. 389, and June 16, 1893, P. L. 466, both of which are quoted in Chapter LXII.

Clause 2. That if the proprietor of any share neglect to pay a sum duly assessed thereon, for the space of thirty days after the time appointed for payment, the treasurer of the company may sell by public auction a sufficient number of the shares to pay all assessments then due, with necesary and incidental charges thereon. The treasurer shall give notice of the time and place appointed for such sale, and of the sum on each share, by advertising the same three weeks successively before the sale in some newspaper published in said county; and a deed of the share so sold made by the treasurer, and acknowledged before a justice of the peace, and recorded by the clerk, who shall transfer said shares to the purchaser, who shall be entitled to a certificate therefor.

Clause 3. The president and directors, with the treasurer and clerk of such companies, shall, after the payment of the last instalment of the capital stock, make a certificate stating the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the president, treasurer, clerk, and a majority of the directors, and they shall cause the same to be recorded in the office of the recorder of deeds for said county.

Clause 4. If any part of the capital stock of a company is withdrawn and refunded to the stockholders, before the payment of all the debts of the company, contracted previously to the recording of a copy of the vote for that purpose in the office of the recorder of deeds, as prescribed in the preceding section, all the stockholders of the company shall be jointly and severally liable for the payment of such debts.

Clause 5. If the directors of any company declare any dividend when the company is insolvent, or the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the company then existing, and for all thereafter contracted, so long as they respectively continue in office: Provided, that the amount for which they shall be liable shall not exceed the amount of such dividend, and if any of the directors are absent at the time of making the dividend or object thereto, at said time, and file their objections in writing with the clerk of the company, they shall be exempted from such liability.

Clause 6. The whole amount of the debts which any such company at any time owes, shall not exceed the amount of

its capital stock actually paid in, unless such debt be for unpaid purchase-money for lands bought, which debt shall only be a lien upon and collectible from said land; and in case of any excess, the directors, under whose administration it occurs, shall be jointly and severally liable to the extent of such excess for all the debts of the company then existing, and for all that are contracted, so long as they respectively continue in office, and until the debts are reduced to the amount of the capital stock: Provided, that any of the directors who are absent at the time of contracting any debts, contrary to the foregoing provisions, or who object thereto, may exempt themselves from liability by forthwith giving notice of the facts to the stockholders, at a meeting which they may call for that purpose. If any certificate made, or any statement or notice given by the officers of a company, under the provisions of this act, is false in any material representation, all the officers who signed the same, knowing it to be false, shall be jointly and severally liable for all the debts of the company contracted while they were officers or stockholders thereof.

Clause 7. Such corporation may, in its corporate name, take, hold, and convey such real and personal estate as is necessary for the purpose of its organization, may carry on its business, or so much thereof as is convenient, beyond the limits of the Commonwealth, and may there hold any real or personal estate necessary for conducting the same.

Clause 8. Every such corporation shall, annually, in September, make, and the president, treasurer, and a majority of the directors shall sign, swear to, and deposit with the recorder of deeds for said county, a certificate stating the amount of capital stock paid in, the names and number of shares held by each stockholder, the amount invested in real estate and in personal estate, the amount of property owned and debts due to the corporation, on the first day of August next preceding the date of such certificates, and the amount, as nearly as can be ascertained, of existing demands against the corporation at the date of the certificate.

Clause 9. When the officers of such corporation have failed to perform the duties prescribed in this act, as to making certificates, the certificates therein mentioned may be made and filed at any time after such failure; and such officers shall not be personally liable for debts of the corporation con-

tracted after the requisitions of this act have been complied with.

Clause 10. Process shall be served upon such corporations in the same manner as is now directed by law with regard to other corporations. The Court of Common Pleas of the proper county shall have the same power to dissolve such corporation, upon petitions filed under the corporate seal, which it now has with regard to other corporations. When special stock is created by any corporation, under this act, the general stockholders shall be liable for all debts and contracts until the special stock is fully redeemed.

Clause 11. The stockholders of any and all corporations, under this act, shall be personally liable for all sums of money due to laborers, clerks, and operatives, for services rendered within six months before demand made upon the corporation, and its neglect or refusal to make payment; and when judgment is obtained against any corporation for wages or labor due to an amount not exceeding two hundred dollars, said corporation shall not be entitled to stay of execution.

Clause 12. Any such corporation may, from time to time, acquire and dispose of real estate, and may construct, have, or otherwise dispose of dwellings and other buildings; but no power to sell or release the real estate of such corporation shall be exercised by the directors thereof, unless such power be expressly given in the certificates originally filed, without a consent of a majority of the stock in value consenting and agreeing to such sale or lease before making the same, which consent shall be obtained at a meeting of the stockholders to be held for that purpose, of which meeting thirty days' notice shall be given in one of the newspapers of the proper county, and such consent shall be evidenced only by the written signatures of said stockholders.[49]

[49] Section 39 has not been changed by subsequent legislation.

The Act of May 21, 1881, P. L. 30, provided as follows:

"All corporations for mining, manufacturing, or trading purposes, whether created by general or special Acts of Assembly, whose charters may have expired, or may hereafter expire, may bring suits, and maintain and defend suits already brought, for the protection and possession of their property, and the collection of debts and obligations owing to, or by them, and sell, convey, and dispose of their property, and make title therefor, as fully and effectually as if their charters had not expired; and the officers last elected, or the survivors of them, shall be officers to represent said corporations for such purposes, and if no officers survive, the

RE-CHARTERING CORPORATIONS.

Sec. 40. Corporations created by or under the laws of this State, embraced within either of the classes named in Section 2 of this act, the charters whereof are about to expire by lapse of time from their own limitation, may be re-chartered, or the charters thereof renewed, under the provisions of this act, by preparing, having approved and recorded the certificate named in said section for the class of corporation of which the same is one, in addition to the requirements provided in this act for a new corporation; the certificate for a re-charter shall state the fact that it is a renewal of the former charter, naming the corporation and the date of its first charter. It shall also be accompanied with a certificate, under the seal of the corporation showing the consent of at least a majority in interest of such corporation to such re-charter. It shall also state the financial condition of the said corporation at the date of such certificate, showing capital stock paid in, funded debt, floating debt, estimated value of property and cash assets, if any. It shall expressly accept the provisions of the Constitution of this State and of this act, and expressly surrender all privileges conferred upon such corporation by its original charter that are not enjoyed by corporations of its class under this act or general laws of this Commonwealth. From the date of recording of such certificate, if the corporation be of the first class named in Section 2 of this act, and from the date of letters-patent, if of the second class, the said re-chartered corporation shall be and exist as a new corporation under the provisions of this act and of its said renewed charter; and all of the rights, privileges, powers, immunities, lands, property, and assets, of whatever kind or character the same may be, possessed and owned by the said original corporation, shall vest in and be owned and enjoyed by the said re-chartered corporation, as fully and with like effect as if its original charter had not expired, save as herein and by said certificate expressly stated otherwise; and all suits, claims, and demands by said corporations in existence at the date of such re-charter, shall and may be sued, prosecuted, and collected, under the laws governing the

stockholders may elect officers under their by-laws: Provided, that this act shall be construed only so as to enable said corporations to realize and divide their assets, and wind up their affairs, and not to transact new business."

said corporation prior to its re-charter, and all claims and demands of every nature and character in existence at said re-charter, may be collected from and off the said re-chartered corporation, as fully and with like effect as if no change had taken place.[50]

ASSESSMENT OF DAMAGES.

Sec. 41. That in all cases in which, under the provisions of this act, any corporation is permitted to take waters, streams, lands, property, materials, or franchises for the public purposes thereof, and the said corporations cannot agree with the owner or owners of any such waters, streams, lands, materials or franchises, for the compensation proper for the damage done or likely to be done to or sustained by any such owner or owners of such waters, streams, land, or materials, which such corporation may enter upon, use or take away, in pursuance of the authority herein given, or by reason of the absence or legal incapacity of any such owner or owners, no such compensation can be agreed upon, the Court of Common Pleas of the proper county, on application thereto, by petition, either by said corporation or by the owner or owners or any one in behalf of either, shall appoint five discreet and disinterested freeholders of the proper county, and appoint a time not less than ten nor more than twenty days thereafter, for said viewers to meet at or upon the premises where the damages are alleged to be sustained, or the property taken, of which time and place five days' notice shall be given by the petitioner to the said viewers and the other party; and the said viewers, or any three of them, having been first duly sworn or affirmed faithfully, justly, and impartially to decide and true report to make concerning all matters and things to be submitted to them, and in relation to which they are authorized to inquire in pursuance of the provisions of this act, and having viewed the premises, they shall estimate and determine the quantity, quality, and value of said lands, streams, or property so taken or occupied, or to be taken or occupied, or the materials so used or taken away, as the case may be, and having a due regard to and making just allowance for the advantages which may have resulted, or which may seem likely to result to the owner or owners of said streams, land, or materials, in consequence

[50] Section 40 has not been changed by subsequent legislation.

of the making the improvements or conducting the operations of such corporation or of the construction of works for which the property is to be taken; and after having made a fair and just comparison of said advantages and disadvantages, they shall estimate and determine whether any, and if any, what amount of damages has been or may be sustained, and to whom payable, and make report thereof to the said court; and if any damages be awarded, and the report be confirmed by the said court, judgment shall be entered thereon; and if the amount thereof be not paid within thirty days after the entry of such judgment, execution may then issue thereon, as in other cases of debt, for the sum so awarded, and the costs and expenses incurred shall be defrayed by the said corporation; and each of the said viewers shall be entitled to one dollar and fifty cents per day for every day necessarily employed in the performance of the duties herein prescribed, to be paid by such corporation.

In all cases where the parties cannot agree upon the amount of damages claimed, or by reason of the absence or legal incapacity of such owner or owners no such agreement can be made, either for lands, streams, water, water-rights, franchises, or materials, the corporation shall tender a bond with at least two sufficient sureties to the party claiming or entitled to any damages, or to the attorney or agent of any person absent, or to be guardian or committee of any one under legal incapacity, the condition of which shall be that the said corporation will pay, or cause to be paid, such amount of damages as the party shall be entitled to receive after the same shall have been agreed upon by the parties, or assessed in the manner provided for by this act: Provided, that in case the party or parties claiming damages refuse or do not accept the bond as tendered, the said corporation shall then give the party a written notice of the time when the same will be presented for filing in court, and thereafter the said corporation may present said bond to the Court of Common Pleas of the county where the lands, streams, water, or materials are, and if approved the bond shall be filed in said court for the benefit of those interested, and recovery may be had thereon for the amount of damages assessed, if the same be not paid or cannot be made by execution on the judgment in the issue formed to try the question.

The viewers provided for in this section may be appointed

before or after the entry for constructing said work or taking materials therefor, and after the filing of the bond hereinbefore provided for; and upon the report of said viewers, or any four of them, being filed in said court, either party, within thirty days thereafter, may file his, her, or their appeal from said report to said court. After such appeal either party may put the cause at issue in the form directed by said court, and the same shall then be tried by said court and a jury, and after final judgment, either party may have a writ of error thereto from the Supreme Court, in the manner prescribed in other cases; the said court shall have power to order what notices shall be given connected with any part of the proceedings, and may make all such orders connected with the same as may be deemed requisite. If any exceptions be filed with any appeal to the proceedings, they shall be speedily disposed of; and if allowed a new view shall be ordered; and if disallowed the appeal shall proceed as before provided.[51]

AMENDMENTS TO CHARTERS.

Sec. 42. As often as the corporations named in the first class specified in the second section of this act, including all such corporations now in existence, and colleges and universities, shall be desirous of improving, amending, or altering the articles and conditions of their charter, it shall and may be lawful for such corporations respectively, in like manner, to specify the improvements, amendments, or alterations which are or shall be desired, and exhibit the same to the Court of Common Pleas of the proper county in which said corporation is situated, as aforesaid, when, if said court shall be of opinion such alterations are or will be lawful and beneficial, and do not conflict with the requirements of this statute or of the Constitution, it shall be the duty of said court to direct notice to be given as provided in the third section of this act, of such application, and after decree made and such amendments are recorded, the same shall be deemed and taken to be a part of the charter of the said corporation.[52]

[51] Section 41 has not been changed by subsequent legislation. For construction of the section see Chapter XXXIII. See also page 427 for Act of June 10, 1893, P. L. 415, relating to the termination of easements in land.

[52] The Act of April 17, 1876, Sec. 12, P. L. 37, amended Section 42 so as to read as follows:

CORPORATION STORES.

Sec. 43. Every manufacturing, mining, or quarrying company incorporated under the provisions of this act shall be confined exclusively to the purposes of its creation, as specified in its charter, and no such company shall manufacture

"As often as the corporations named in the first class, specified in the second section of the act to which this is a supplement, including all such corporations now in existence, and academies, colleges, and universities, shall be desirous of improving, amending, or altering the articles and conditions of their charters, it shall and may be lawful for such corporations, respectively, in like manner to specify the improvements, amendments, or alterations which are or shall be desired, and exhibit the same to the Court of Common Pleas of the proper county in which said corration is situated as aforesaid, where, when, if said court shall be of opinion such alterations are or will be lawful and beneficial, and do not conflict with the requirements of the statute to which this is a supplement or of the Constitution, it shall be the duty of said court to direct notice to be given, as provided in the third section of the act to which this is a supplement, of such application, and after decree made and such amendments are recorded, the same shall be deemed and taken to be part of the charter of the said corporation."

The Act of June 13, 1883, provided for amending charters of the second class, as follows:

"Section 1. When any corporation, formed for any of the purposes named in the second class of Section 2 of the act to which this is a supplement, or embraced in that class by any of its supplements, and which shall have been or may hereafter be incroporated under the provisions of that act or its supplements, as also any corporation of the second class which has heretofore or may hereafter accept the provisions of said act and the several supplements thereto, and the Constitution of this Commonwealth in the manner provided by law, shall desire to improve, amend, or alter the article and conditions of the charter or instrument upon which said corporation is formed and established, it shall and may be lawful for such corporation to apply to the governor of this Commonwealth for such improvement, amendment, or alteration in the manner provided by this act.

"Section 2. The corporation desiring such improvement, amendment, or alteration shall give notice of the intention to apply therefor, in two newspapers of general circulation, printed in the county wherein the principal office or place of business of said corporation is located, once a week for three weeks, setting forth briefly the character and objects of the desired improvements, amendments, or alterations, and the intention to make application therefor.

"Section 3. The said corporation shall prepare a certificate under its

or sell any commodity or articles of merchandise other than those therein specified. No such company shall engage in nor shall it permit any of its employees or officials to engage in the buying or selling upon the lands possessed by it of any wares, goods, or commodities or merchandise, other than those specified in their charter or necessary for the manufacture of the same. No such company shall permit to be withheld or authorize or direct the withholding of wages due any of its operatives or employees by reason of the sale or furnishing of goods, wares, or merchandise by any person to such operatives or employees, unless the same be withheld by reason of and in obedience to due process of law; but nothing herein contained shall prohibit any such company

corporate seal, setting forth the character and objects of the proposed improvement, amendment, or alteration of their charter or the instrument upon which said corporation is formed or established, acknowledged by the president and secretary of said corporation, before the recorder of deeds of the county wherein such corporation has its principal office or place of business, which certificate, together with proof of publication of notice as hereinbefore provided, shall then be produced to the governor of the Commonwealth, who shall examine the same, and if he finds it to be in proper form, and that such improvements, amendments, or alterations are or will be lawful and beneficial, and not injurious to the community, and are in accord with the purposes of the charter, he shall approve thereof and indorse his approval thereon, and direct letters-patent to issue in the usual form, reciting the said improvements, amendments, or alterations, and the said certificate shall then be recorded in the office of the secretary of the Commonwealth, and with all its indorsements shall then be recorded in the office for the recording of deeds in and for the proper county where the principal office or place of business of said corporation is located, and from thenceforth the same shall be deemed and taken to be a part of the charter or instrument upon which said corporation was formed or established to all intents and purposes, as if the same had originally been made a part thereof: Provided, that nothing herein contained shall authorize the amendment, alteration, improvement, or extension of the charter of any gas or water company so as to interfere with or cover territory previously occupied by any other gas or water company.

"Section 4. Nothing in this act contained shall be construed to repeal or authorize the repeal of any of the requirements or restrictions of the said Act of April 29, 1874, and its supplements, nor to dispense with any of the provisions of the said act, nor to authorize the right of eminent domain to be given to any corporation by amendment of its charter, nor to permit any change in the objects and purposes of such corporations as shown by its original charter."

from supplying to its employees oil, powder, and other articles and implements necessary for or used in mining.[53]

BONUS.

Sec. 44. Every company incorporated by or under the provisions of this act, or accepting the same, except turnpike, bridge, cemetery companies, or building and loan associa-

[53] Section 43 has not been in express terms changed or amended by any subsequent legislation, but the Act of June 9, 1891, P. L. 256, provided as follows:

"Section 1. On and after the passage of this act, it shall not be lawful for any mining or manufacturing corporations of this Commonwealth, or the officers or stockholders of any such corporation, acting in behalf or in the interest of any such corporation, to engage in or carry on, by direct or indirect means, any store known as a company store, general supply store, or store where goods and merchandise other than such as have been mined or manufactured by the mining or manufacturing corporation of which said officers or stockholders are members, are kept or offered for sale.

"Section 2. No mining or manufacturing corporation engaged in business under the laws of this Commonwealth, shall lease, grant, bargain, or sell to any officer or stockholder of any such corporation, nor to any other person or persons whatsoever, the right to keep or maintain upon the property of any such corporation, any company, general supply or other store in which goods other than those mined or manufactured by the corporation granting such right, shall be kept or exposed for sale, whenever such lease, grant, bargain, or sale as aforesaid, is intended to defeat the provisions of the first section of this act. Nor shall any such mining or manufacturing corporation, through its officers, stockholders, or by any rule or regulation of its business, make any contract with the keepers or owners of any store, whereby the employees of such corporation shall be obliged to trade with such keeper or owner, and that any such contract made in violation of this act shall be *prima facie* evidence of the fact that such store is under the control of such mining or manufacturing corporation, and in violation of this act.

"Section 3. For any violation of any of the provisions of this act by any mining or manufacturing corporation aforesaid, such mining or manufacturing corporation so offending shall forfeit all charter rights granted to it under the laws of this Commonwealth, and it is hereby declared and made the duty of the attorney-general of this Commonwealth, upon complaint of such violation of any of the provisions of this act, by a petition signed and sworn to by two or more citizens, residents of the county where the offense is sworn to have been committed, to immediately commence proceedings against the corporation or corporations complained against, by a writ of *quo warranto*."

tions, and excepting all of those corporations named in the first class of Section 2 of this act, shall pay to the state treasurer, for the use of the Commonwealth, a bonus of one-quarter of 1 per centum upon the amount of the capital stock which said company is authorized to have, in two equal instalments, and a like bonus upon any subsequent increase thereof. The first instalment shall be due and payable upon the incorporation of said company, or upon the increase of the capital thereof, and the second instalment one year thereafter; and no company as aforesaid shall have or exercise any corporate powers until the first instalment of said bonus is paid, and the governor shall not issue letters-patent to any company until he is satisfied that the first instalment of said bonus has been paid to the state treasurer; and no company incorporated as aforesaid shall go into operation, or exercise any corporate powers or privileges until said first instalment or bonus has been paid as aforesaid.[54]

[54] The Act of May 22, 1878, P. L. 97, amended Section 4 so as to read as follows:

"Every company incorporated by or under the provisions of this act, or accepting the same, except turnpike, bridge, and cemetery companies, or building and loan associations, and excepting all of those corporations named in the first class of Section 2 of this act, shall pay to the state treasurer for the use of the Commonwealth, a bonus of one-quarter of one per centum upon the amount of the capital stock which said company is authorized to have, in two equal instalments, and a like bonus upon any subsequent increase thereof. The first instalment shall be due and payable upon the incorporation of said company or upon the increase of the capital thereof, and the second instalment one year thereafter, and no company as aforesaid shall have or exercise any corporate powers until the first instalment of said bonus is paid, and the governor shall not issue letters-patent to any company until he is satisfied that the first instalment of said bonus has been paid to the state treasurer; and no company incorporated as aforesaid shall go into operation or exercise any corporate powers or privileges until said first instalment or bonus has been paid as aforesaid: Provided, that when any corporation shall have reduced its capital stock in accordance with the provisions of the twenty-third section of this act, such corporation shall not be liable in the aggregate for a greater bonus than one-fourth of one per cent. upon the capital stock as altered and reduced."

The Act of June 15, 1897, P. L. 155, took as the basis of amendment Section 44 as it stood in the Act of 1874, and disregarded the amending Act of May 27, 1878, P. L. 97. The Act of 1897 reads as follows:

"Every company incorporated by or under the provisions of this act,

Sec. 45. That it shall be the duty of the secretary of the Commonwealth to prepare and publish, with every edition of the pamphlet laws, a certified list of all charters of incorporation filed in his office, and incorporated under the provisions of this act, stating the style, title, purpose, and location

or accepting the same, except turnpike, bridge, cemetery companies, or building and loan associations, and excepting all those corporations named in the first class of Section 2 of this act, shall pay to the state treasurer, for the use of the Commonwealth, a bonus of one-third of one per centum upon the amount of the capital stock which said company is authorized to have, and a like bonus on any subsequent authorized increase thereof. And no company as aforesaid shall have or exercise any corporate powers until the said bonus is paid, and the governor shall not issue letters-patent to any company until he is satisfied that the said bonus has been paid to the state treasurer. And no company incorporated as aforesaid shall go into operation, or exercise any corporate powers or privileges until said bonus has been paid. The secretary of the Commonwealth shall not permit the filing in his office of any proceedings for increase of capital stock until he is satisfied that the said bonus upon said increase has been paid to the state treasurer."

The Act of May 7, 1889, P. L. 115, provided for the payment of bonus on increase of capital as follows:

"From and after the passage of this act, any corporation heretofore or hereafter incorporated by or under any general or special law of this Commonwealth, except railroad, canal, turnpike, bridge, and cemetery companies, building and loan associations, agricultural societies, and companies or associations incorporated for literary, charitable, or religious purposes, upon increasing their capital stock, in pursuance of any general or special law, shall pay to the state treasurer, for the use of the Commonwealth, a bonus of one-quarter of one per centum upon the amount of the authorized increase, in two equal annual instalments; the first shall be due and payable upon the date of the authority to increase as aforesaid, and the second within one year thereafter. All laws or parts of laws inconsistent herewith are hereby repealed."

Under the Act of March 22, 1887, Sec. 10, P. L. 8, traction and motor companies pay the same bonus as provided by the Act of April 29, 1874, and if such companies are re-organized under the Act of 1887 they are credited with the bonus which may have been previously paid by them.

Under the Act of May 29, 1885, Sec. 15, P. L. 29, natural gas companies organized under the act pay bonus as provided by the Act of 1874, and on reorganizing are credited with bonus previously paid.

Manufacturing companies incorporated under the Act of April 29, 1874, which extend their charter, must under the Act of June 25, 1895, P. L. 312, pay "the fee and bonus on their capital stock now fixed by law for the renewal or extension of a corporate charter."

of every such corporation, and he shall prepare and publish a complete alphabetical index to the same.[55]

Sec. 46. That from and after the passage of this act, the Acts of the General Assembly, entitled "An act to encourage manufacturing operations in this Commonwealth," approved April 7, 1849; "An act to enable joint tenants, tenants in common, and adjoining owners of mineral lands in this Commonwealth, to manage and develop the same," approved April 21, 1854; "An act relating to corporations for mechanical, manufacturing, mining, and quarrying purposes," approved July 18, 1863; "An act to provide for the incorporation of iron and steel manufacturing companies," approved March 21, 1873, and the several supplements to each of said acts, be and the same are hereby repealed, so far as they provide for the creation of corporations for any of the purposes provided for by this act, or are inconsistent with this act.[56]

[55] Section 45 has not been changed by subsequent legislation.

[56] Section 46 has not been affected by subsequent legislation.

III.

THE LAW OF PROCEDURE IN CORPORATION MEETINGS, BY GEORGE M. DALLAS.*

The student who desires to inform himself upon the general subject of what is called corporation law, may turn to text-books and decided cases, quite numerous enough to meet all his requirements. That wide domain has, for the most part, been amply tilled, and it is not now proposed to cumber the soil with clippings cut from its redundant fruitfulness, but to venture only upon the cultivation of the single field which has not already had sufficient husbandry. Many questions of law may arise at corporation meetings, or in consequence of their action, which are not now for consideration. To the investigation of the practice which should regulate the proceedings of such assemblies the subject of this address confines it. It is a subject the importance of which becomes at once apparent when we remember that at this day much of the active wealth of the world is controlled, and much of its important business is transacted, by corporations, each of which consists of the aggregation of a number of natural persons in one artificial body, whose members must frequently be gathered together for ascertainment and expression of the corporate will.

*This address was delivered before the Law Academy of Philadelphia on Jan. 15, 1884. In granting permission to re-publish it in this work its author desired it to be stated that it was prepared without any special examination of authorities, and that it has not been revised as it would have been if he had himself contemplated its presentation to the profession at large, and after so great a lapse of time.

Some corporations comprise but few members, and, where that is the case, the questions about to be discussed are not likely to present themselves, and, when they do, may generally be disposed of with comparative ease and facility. There are, however, many corporations the shareholders or members of which are quite numerous, and amongst whom differences of opinion frequently occur as to what the corporate will should be, or as to the persons to whom the execution of its will, and the administration of its affairs, should be confided. The meetings of such bodies are not always harmonious. Conflict, if conducted decently and in order, cannot, and should not, be prevented. Contention, properly regulated, is the right of every member. It may reconcile, and it must determine, every disagreement. In the end, the will of the majority, as constituted by law, must be accepted as the will of the corporation itself; but the equal right of each member to present his views, and to urge them upon his fellows, must be maintained; and the corporate will cannot, in any case, be said to have been lawfully declared, where opportunity for the exercise of this right has not been afforded.

Every member is entitled to notice of a corporation meeting; to participate in its organization; to submit proposals for its action; to suggest amendments to the proposals of others; to discuss all debatable questions; and to have his due share in the decision of all matters which come properly before it for its determination.

The right to notice results from the right to be present; and, consequently, the majority can act for the whole body only at a meeting held in pursuance of notice to all its members. The law is emphatic and rigid in insisting upon exact compliance with its requirements upon this subject. No particular of its directions, as to the time and manner of notice, the person by whom it shall be given, or the details to be notified, can in any case be safely disregarded. These particulars are frequently settled by charter or by-laws, and,

where they are, the only course prescribed must be strictly pursued. Sometimes the charter or by-laws, themselves, designate the time and place for holding certain meetings, and, where they do, no additional notice of those meetings is requisite, as all the members are bound to take notice of such provisions. Where neither the charter nor by-laws prescribe the notice, or fix the time and place of meeting, the law requires that reasonable notice shall be given, according to the circumstances of each case, and, in every instance, it must be such as fairly to enable the members to be present at the time and place appointed. Where, in the absence of express provision, a corporation has uniformly adhered to a particular course of practice with respect to notice, so that an established usage upon the subject can be said to have grown up, that practice, if reasonable in itself, should not be unnecessarily departed from.

Where the notice is required to be given upon a certain day, or at a time not later than at a certain period before the time of meeting, it will not be sufficient if given upon another day, or when the specified period will not intervene before the time fixed for the meeting; and if the manner of notice, as that it shall be personal, by mail, or by publication, has been lawfully directed, no other method should be substituted; but actual personal notice would probably always be held to be sufficient. The notice must be given by the person especially authorized to give it, where such authorization exists. It must designate, with exactness, the time and place of meeting; and, where the meeting is a special one, the business to be presented for its deliberation and action should also be stated.

The charter or by-laws of corporations do not usually provide, and seldom adequately, for the regulation of the proceedings of their meetings; but, where they do, such provisions, so far as they extend, must, of course, be followed. Therefore, what is now to be said, must be considered with reference, and in subjection, to the charter and by-laws of the particular corporation in each case. This is mentioned

now, and once for all, in order that the necessity, which would otherwise arise, of frequently qualifying the principles and rules of general application, which are about to be stated, may be avoided.

The coming together of a number of persons, at the place and time fixed for a corporation meeting, does not constitute such a meeting. In the restricted sense in which that word should be used in the present connection, such a gathering is not a meeting at all. It is merely an assemblage, from which a meeting is to be evolved by organization, and until that shall have been accomplished, no distinctive body exists, and no business can properly be done, or should be attempted, other than that which is necessary to effect an organization. Accordingly, at the place fixed, and at the hour appointed, or soon thereafter, the persons assembled should be called to order by one of their number, who, at the same time, may move the election of a person, to be named in the motion, to be chairman. If any person, or persons, other than the one so named, should be suggested for election to the same office, by any other, or others, of those present, such suggestion, or suggestions, should not be treated as in amendment of the motion as at first made, but that motion would itself be superseded. The question should not be put upon the motion, or upon any subsequent suggestion as an amendment of it; but an election should at once be proceeded with, and the candidate receiving a majority of all the votes should be declared elected. If, when a motion is made to elect a designated person to be chairman, no suggestion of any other person is interposed, usage sanctions the putting of the question upon that motion, and the announcement of the result of a majority affirmative vote upon it, as the election of the person named in it.

The presiding officer, chosen by one or other of the methods just indicated, should, immediately upon the announcement of his election, take the chair and assume its functions. Prior to such election it is customary and proper

for the person who calls the assembly to order and submits the first motion to it, to act as if chairman, by putting questions, announcing results, and the like.

The organization of a meeting may be at once permanently made, or it may, in the first instance, be preliminary only. Where the character of the organization intended to be effected is not stated prior to the announcement of the result of the vote upon the election of a chairman, as entered upon at the outset, the organization first made will be a permanent one. If it is intended that a preliminary organization shall intervene, that intention should be manifested, either by a vote upon a separate motion to that effect, or by inserting the word "temporary" in any motion, or nomination, with reference to the election of a chairman. Ordinarily corporation meetings do not, and should not, pass through this intermediate or inchoate state; but the conservation of the right of every member to participate duly in the final or actual organization, may render a preliminary one necessary, and where that is the case, it should be resorted to. If no objection is interposed to the selection of a permanent chairman at once, by the votes, given in the usual manner, of a majority of those persons present, it may be assumed that every member of the corporation is content to have the selection so made, and the creation of a temporary organization, under such circumstances, would conduce to nothing but unprofitable delay. Any member may, however, reasonably demand that a meeting shall, in the first place, be temporarily organized, so that there may be an orderly and correct ascertainment of those who compose the electoral body of the corporation, and the voting power of each of them, before the election of a presiding officer for the meeting which is to determine the corporate will, shall be held. There may be present some who have no right to vote at all, and the others may, under the law, be each entitled to vote a certain, but not all the same, number of votes, and no more, and in a certain manner, and not otherwise. Manifestly, there must be

some method of settling these preliminaries in advance of actual voting, or the right of each member of a corporation to share, to the exact extent of his lawful power, in determining the final organization of its meetings, can be of no real value. The matter is one of substance and not of form. By some method the exercise of the right just referred to must be rendered practicable, and it is believed that no means to that end, better than the familiar expedient of temporary organization, can be suggested.

When a preliminary organization is demanded, a temporary chairman must be elected in the manner heretofore stated, and the business then next in order is the election of a temporary secretary. By the election of the latter officer the preliminary organization is completed. No general business can then be transacted, and the proceedings must be strictly confined to such as are requisite to effect a permanent organization; that is to say, to the election of a permanent chairman and secretary. For that purpose the authority and power of the meeting and of its officers, at this stage, are ample. Order can be maintained; the voting power of every member, whether the same as to each of them, or to be rated according to their respective interests, or ownership of stock, may be decided, as also whether the vote may be by proxy, whether it must be by ballot, and all other questions of the same kind. Without a temporary organization it would not be practicable to pass upon such questions at all, or to have any authoritative record of the course actually pursued, for reference in case of subsequent doubt, dispute, or litigation.

As a general rule, when such questions as have just been referred to, and which relate to the voting power and the manner of its exercise, are raised with reference to the election of permanent officers, the decision upon them should be the same, and should be made in the same manner, as upon any similar occasion after permanent organization.

When the meeting shall have been permanently organized,

the duty devolves upon its chairman to maintain and enforce order, with courtesy, but with firmness; and to decide (subject to appeal) all questions of order which may arise during its sessions, and, generally, to preside over the deliberations of the members, with impartiality and to the best of his ability. The chairman is entitled to the support of the meeting in the exercise of his authority for the maintenance of order, and to have his decisions promptly acquiesced in, except when properly appealed from; and every appeal should be decorously and respectfully taken.

The chief duty of the secretary is to keep plain and truthful minutes of the actual proceedings of the meeting, without incorporating therein any comments of his own, or the remarks of others. If this simple rule be adhered to, there can be but little difficulty in the proper performance of the functions of his office; but, in case of doubt, he may apply to the chair for instructions. Such instructions, however, or the action of the secretary thereon, or independently thereof, do not preclude the meeting itself from requiring that the minutes, which constitute the record of its proceedings, and are, therefore, subject to its control, shall contain an exact and complete statement of those proceedings, and nothing else. Therefore, and because the members should, by affirmative action, make the minutes, when correct, their own, it is customary to have them read at proper intervals, and either without, or after correction, to formally adopt them. When the deliberations of a meeting extend over several days, the usual and most convenient practice is to have the minutes of each immediately preceding day read and acted upon at the commencement of the first session of the succeeding day; and it is desirable that all minutes not previously acted upon, should be made the subject of action immediately prior to final adjournment, so that no part of them shall fail to receive the consideration, and, finally, the approval of the meeting.

In some corporations it has been customary to submit to

a subsequent meeting of its stockholders, for their action, the minutes of a wholly distinct previous meeting. This is a mistake. Parliamentary law is not a mere collection of arbitrary and senseless rules, but is based upon principles of reason and justice, and the consideration of convenience in their application; and the practice referred to, which has been followed in supposed deference to that law, is wholly at variance with its spirit. The only action which can properly be taken upon minutes, is their adoption, either with or without amendment; and the only body which can rightfully take such action is that whose record they are. How can a subsequent meeting, possibly wholly different in its composition, and probably largely so, rightfully or intelligently, pass upon the correctness of the record of a previous meeting? What power has the subsequent meeting to alter the record of a previous one, which, as has been pointed out, should have been already formally approved and adopted by it? It has probably been foreseen, where the erroneous course referred to has been pursued, that the latter meeting would adopt, and, accordingly, it has adopted the minutes of the former one; and so the objection to such a proceeding has not been observed, and the embarrassment which would arise in case a later meeting should undertake to alter the record of a former one, has not been actually encountered. This, however, does not prove the practice to be a correct one, and, as it can never serve any useful purpose, it should not be followed.

There can be no objection to reading, for the information of any meeting, the minutes of a former one, and, where this is desired, it may be done by the secretary; but the chairman should not put any question with respect to them, and any motion to amend, or to adopt such minutes, should be decided to be not in order.

The minutes of a meeting must not be confounded with the proceedings of which they are the record. The minutes cannot be in any manner altered except by the meeting to

which they relate, and even by it only to such extent as may be requisite to make them a complete, truthful, and clear exhibit of the doings of that meeting; but any action of a former meeting may be modified, or reversed, by a subsequent one, so far as such action may, at the time of the later meeting, be still capable of modification, or reversal.

The presence of a quorum is requisite to the transaction of business. If any doubt exists upon this subject it should be determined immediately after organization. In the absence of special provision, those entitled in their own right, or as lawfully representing others, to cast a number of votes equal to a majority of the whole number of votes which might, if every member were present, be cast at the meeting, will constitute a quorum. The reason for this is, upon the one hand, that a majority of the members of a corporation should not be prevented from acting upon its affairs because a minority fail to attend at the proper time and place; and, upon the other, that less than a majority of a majority of all the members should not be permitted to bind the whole body.

When the meeting has been finally organized and a quorum has been ascertained, or is known, to be present, it is prepared and competent to transact the business, general or special, for which it has been lawfully convened. It is advisable that, at the outset, the call, the notice to members, and the pertinent portions of the charter and by-laws, or such of these as may exist with reference to the particular meeting, should be read, as the subjects which can rightfully be acted upon will generally be indicated by such reading.

The maxim that the law looks to the substance and not to the form of things, is to be liberally applied in any investigation of the conduct of a corporation meeting. The members of such bodies are, in general, profoundly ignorant of parliamentary law, and to hold them to a strict compliance with its rules would, in many cases, be most unreasonable. Still the parliamentary common law (not the practice of any particular legislative body) is a part of the law of the land.

It is the only law which can be applied at these meetings, or in any subsequent judicial review of their proceedings; and the only questions are, as to the extent to which it is properly applicable to them, and as to the consequences of its violation in particular cases.

The principles of parliamentary law are founded in reason, and are of general applicability; but the forms of procedure which it has established are not all of universal fitness. From this it results that that law should be referred to whenever a question of practice is presented for determination in a corporation meeting; but that the acceptance of every device or expedient known to it is not obligatory, and many of them should be rejected.

The principal rights of the members of corporations which are exercisable in corporation meetings, after organization, may be summarized and briefly stated. They consist of the rights of proposal, of emendation, of discussion, and of decision; and the rights of each of the members, as in society at large, must, as to the manner of their enjoyment, be so far restrained as the good of the whole body requires.

A member who desires to submit a proposition, either originally, or by way of amendment, must do so (except as to nominations) by presenting it to the meeting for its action, in the form of a motion.

Without attempting to precisely follow any of the writers upon parliamentary law, motions may conveniently, and with sufficient accuracy for the present purpose, be classified and defined as follows:

A main motion is one by which a principal proposition is introduced, having direct reference to the business to be transacted, and not relating merely to the time or manner of its transaction, or to the course of procedure in the meeting.

A subsidiary motion is one which is applied either to a main, or to an incidental motion.

An incidental motion is one which does not introduce a

principal proposition, and is not applied to any other motion, but is intended to effect some object incidental to the proceedings.

By making a main motion the mover's right of proposal is asserted, and whether the right, as asserted, exists, depends, in each instance, upon what should be the answer to the question: Is the motion in order?

Whether a main motion is, or is not, in order, is to be determined with reference to its subject-matter, and to the circumstances under which it is offered. If its subject is one upon which the meeting is competent to act, it is in order, unless manifestly frivolous and indecorous, if offered when entitled to present consideration. But if it relate to a question wholly foreign to the purposes of the meeting, or is plainly trifling or indecent, or is offered when another motion or question is pending, no right of its mover will be violated by a refusal to consider it, and a due regard for the rights of the other members, and for the observance of regularity in the conduct of the proceedings, requires that it should not be entertained. A meeting should not be asked to consider a subject upon which it has not the power to act. It cannot be required to concern itself with matters of no importance; and it would be grossly improper for it to consent to discuss any scandalous or unseemly proposition. In the classification of motions, which has just been made, all privileged motions are included amongst those which have been designated as incidental; and, therefore, no main motion, as here defined, is in order when any other motion is before the meeting. "One thing at a time" is a rule of parliamentary law, adherence to which is absolutely necessary to the orderly transaction of business; and, as each member is equally entitled to have his propositions considered, no one of them can rightfully complain of the application to this subject of the maxim, "First in time, first in right."

When a motion has been made it must be seconded before it can be considered or acted upon, or any subsidiary motion

can be applied to it, unless its mover is, himself, possessed of voting power sufficiently great to assure its adoption, even if all the other members should vote against it. This requirement does not unjustly restrict the right which every member has to submit propositions, and to have them considered. It is but a proper limitation to the exercise of that right; for, if the proposer cannot, himself, compel the acceptance of his proposition, it is not unreasonable to insist that one other member shall signify his approval of it, before the meeting shall be required to submit to its discussion, or to take action upon it.

When a main motion has been duly made and seconded, it should be distinctly stated by the chairman, or be read by the secretary, and the chairman should then announce that the motion as stated, or read, is before the meeting, and that the pending question is as to its adoption. Then, if no discussion of it shall ensue, no subsidiary motion be applied to it, and no incidental motion be interposed, the question should be put upon it, and the result, when ascertained, be announced.

The right of emendation also is to be exercised in the form of a motion, which is called the motion to amend. This is a subsidiary motion, and is the most important of its class. It may be applied to all main motions, to a prior amendment in the first degree, and to some of the incidental motions. It cannot be applied to an amendment of an amendment, because amendments further than in the second degree would lead to complication and confusion in very many instances.

Amendments must be relevant, or, to adopt the usual word, must be germane to the proposition to which they are applied. They should, in support of the right of emendation be held to be germane in every case in which it may be reasonably possible to do so; but whenever a really distinct and different proposition is offered under the guise of an amendment, any member may justly demand that it shall be rejected as not in order.

The motion to amend may be made at any time after the proposition to which it is applied has been laid before the meeting by the chairman, and before a vote shall have been ordered thereon; but not when another member has the floor, unless such member will consent to yield it, for the purpose of permitting the amendment to be offered.

The main motion and motions amendatory thereof, are to be submitted to vote in an order the reverse of that in which they shall have been offered. Where there has been an amendment moved, and also an amendment of the amendment, the question is first to be put upon the second amendment, then upon the first, and, finally, upon the main motion. If the second amendment should be lost, the question would recur upon the first amendment simply—that is, as originally proposed; but, if the second amendment should be carried, the question would next be upon the first amendment as amended. In like manner, when the main motion is reached for action, the question must be upon that motion simply, or as amended, as the previous action of the meeting shall have rendered the one form, or the other, appropriate.

The prohibition of amendatory motions beyond the second degree does not derogate from the right of emendation. It merely prescribes the manner of its exercise. There is no limit to the number of amendments which may be proposed, but only to the number which may be pending at the same time. After any motion to amend has been disposed of the proposition to which it applied may be subjected to a further motion to amend; but, of course, the subsequent motion must not be substantially the same as any which shall have been previously passed upon.

The discussion of the propositions of others, or of himself, is as clearly and certainly the right of each member of a corporation meeting, as is proposal or emendation. It is a necessary and inherent right. Its recognition is essential to deliberation, and its existence is not dependent upon the will of the body. The exercise of this right is, however, subject

to lawful control, and the provisions of law by which it is to be regulated, are to be found in the rules of debate, so far as applicable, which established and universally accepted parliamentary practice has prescribed.

As a general rule, all questions are debatable, and exceptions to this rule are admitted only from necessity, or upon imperative grounds of convenience.

A question must be actually pending before any debate can be in order; but in corporation meetings this rule should not always be rigidly enforced. Sometimes business may be advanced by permitting remarks to be made out of strict order, which are pertinent to the general purposes of the meeting, and, where this may be the case, it is not advisable, as long as the privilege is not abused, to refuse to hear such remarks, merely because they have not been preceded by a motion. A member cannot speak without rising and obtaining the floor by the recognition of the chairman. He must address the chair, and not the other members, or any of them. He must confine himself to a discussion of the question before the meeting, and avoid all personality or discourtesy. He who will not comply with these requirements could not justly complain if he should, in consequence of his refusal to do so, be denied participation in debate. Such requirements are eminently proper, and their enforcement is absolutely essential. They do not demand more than is rightly demanded with respect to the conduct of any suitor, who, with a right to hearing quite as sacred, presents himself before a court of justice to speak on his own behalf.

The presiding officer should, during the debate, listen attentively and respectfully to the member who rightfully has the floor, and to no one else. He should protect him against interruption, and promptly suppress any disorderly conduct upon the part of others. If, for the purpose of making an inquiry, or a correction, or with any other admissible object, any other member may desire to interrupt the one who is speaking, he should rise and state his purpose distinctly to

the chairman, and the latter should then call upon the speaker to say whether he will permit himself to be interrupted for the purpose stated, and, if he should decline to do so, the interruption cannot be allowed, and he who sought it must postpone all further remarks until he may, himself, obtain the floor.

One member may yield his right to the floor to another, for a temporary purpose, without thereby forfeiting his right to resume it, and to continue his remarks when the temporary purpose shall have been served, provided the arrangement be made with the cognizance and by the recognition of the chair.

It often happens that several members seek to obtain the floor at the same time. Upon such occasions it is, in general, the duty of the chairman to accord it to him who is first observed to claim it; but there may be, and often is, good reason for preferring some one of the claimants, and, where justice or propriety requires it, the chairman may rightly discriminate amongst them, as, for instance, in the following cases: The mover, or the seconder, of a resolution should have the earliest possible opportunity to speak upon it, so that the views of its proposers with regard to it may be understood, prior to its discussion by others. So far as practicable members whose opinions upon the subject under consideration are known to be opposed, should be alternately recognized, in order that equal opportunity to each side may be afforded; and a member who has not previously spoken upon the same question, should be allowed to do so in preference to one who has been already heard.

Every question must finally be determined in accordance with the views of those members, who, in number (or in interest, if so provided by the law of the corporation) constitute the majority; but that determination can be made only by receiving the votes of all those who, being present in person (or by proxy, where admissible) may desire and be entitled to vote.

The charter or by-laws of corporations usually declare the qualifications requisite to entitle a member to vote; as that he must have been a shareholder for, at least, a certain designated period. Where such provisions exist, they, of course, control; but where they do not, every person who is a member or shareholder at the time will be entitled.

Whether a member must vote in person, or may vote by proxy, is also generally settled by the charter or by-laws. Where these are silent upon the subject voting by proxy is not allowable.

Voting is not only the method by which every question upon a motion is decided, but it is also the means by which at elections the several members, each to the extent of his lawful right, participate in the selection of the corporation's managers and officers. In elections the vote should commonly be by ballot, and, therefore, the little that need be said with especial reference to elections, is postponed until the subject of vote by ballot shall be reached.

There are several methods of voting which have long been employed in legislative assemblies. They are, by unanimous silent assent; by the voice; by division; by roll call; and by ballot; and to these there should be added another, which must frequently be adopted in corporation meetings—the stock vote.

The chairman, where the members seem all to be in favor of a proposition, may, after stating it, inquire whether there is any objection to it, and, if no objection be made in response to that inquiry, the proposition is adopted. This mode of taking the sense of the meeting by unanimous silent assent has been, for convenience, classed as one of the methods of voting, but, in strictness, it is rather an allowable means of ascertaining the will of the meeting, without taking a vote at all. If any objection be interposed, the motion to which the inquiry relates will remain undecided, and a formal vote must be ordered for its determination. This manner of putting questions may frequently be resorted to with ad-

vantage. If not effectual, the inquiry can do no harm, and, where effectual, the time will be saved, which otherwise would be consumed in voting; and this, as to cases where the taking of a stock vote might be the alternative, is a consideration of no little importance.

Voting by voices is the method of most general applicability and common use. The chairman first calls for those who are in favor of the motion to say "aye," and then for those who are opposed to it, to say "no," and, as the voices, upon the one side or the other, appear to him to be of the majority, he announces that the motion has been either carried or lost.

Whenever there is the least doubt as to the result, the chairman, in order to afford ample opportunity for demanding a vote by the more accurate method next mentioned, should first say, "The ayes (or noes) *seem* to have it," and then, if no call for division be made, should, after a moment's pause, add "The ayes (or noes) have it, and the motion is carried (or lost)."

Voting by division may, without demand for it, be ordered by the chairman, if he finds himself unable to determine the result of a vote by voices, or any member may require that it shall, for greater certainty, be resorted to.

A demand for division should be made, if possible, before the final announcement of the result upon the vote by voices; but the better rule, in corporation meetings, is to recognize and act upon a demand for division, even after the announcement of the result of the prior vote, provided no other business shall have intervened. There are several methods of taking the vote by division. The members composing the respective sides may go to different ends of the room. They may alternately pass before the chair, or hold up their hands, or rise and remain standing. The last mentioned practice is the most usual, and, generally, the most expedient one; but any plan, which will enable the secretary (or tellers, if required) to make a separate and correct count of the members upon each side, is unobjectionable.

Voting by roll-call, or, as it is usually termed, by yeas and nays, should be excluded from corporation meetings. The method is a long and tedious one, and not at all suited to their proccedings. The reasons which require the employment of it in representative bodies are wholly inapplicable to the meetings of corporations, and its use by them is not requisite to the maintenance of any right of the members.

Voting by ballot is, except where a stock vote may be otherwise taken, the method appropriate to elections. It is done by each voter depositing in a box a slip of paper, with the office and the name of the person voted for written or printed thereon.

The right of each member to propose to the meeting such action as he may believe should be taken by it, includes the right of suggesting candidates for election to any of the elective offices of the corporation. These suggestions are not made in the form of motions, but as nominations. There is no limit to the number of nominations which may be made, and, on the other hand, it is not necessary that there should be any made; and even where candidates are nominated, the members are not restricted in casting their votes to such nominees.

Elections should be conducted by at least two tellers or judges, who, where not otherwise provided by law, may be chosen by the meeting, or by the chairman, in pursuance of its direction.

At an election the judges should decide every question which arises as to the right to vote of any person offering to do so. They should keep an accurate list of all the voters, upon which they should carefully note each objection made, the name of the person making it, the ground thereof, the decision of the judges thereon, and the reasons for their decision. Opportunity should be afforded for every member to vote; and to this end, it is desirable that, when the voting shall appear to have ceased, the judges, before closing the poll, should announce that they intend to do so at a specified

time, reasonably distant from the time of making such announcement. When the vote is concluded, the judges should open the box, count the votes, and announce the result, either directly or through the presiding officer; and the holding of the election, and the report of the judges thereon, should appear upon the minutes of the meeting.

In the absence of any different special provision of law the majority in number rules at corporation meetings. Therefore, the stock vote is never demandable, except where lawful direction that the vote shall be so taken can be shown. It may be demandable upon some questions, as at an election, for instance, and not upon others; and, therefore, the charter and by-laws must in each case be examined, not only to discover whether a stock vote may, to any extent, be required, but also to ascertain to what subjects such requirement may relate. If the provisions for a stock vote is expressed in general terms, as that each stockholder shall, at all meetings and elections, be entitled to one vote for each share of stock owned by him, it must be conceded that any shareholder may insist that a stock vote shall be taken upon every question which affects his interests as such, and no consideration of convenience merely would justify the meeting in taking the vote upon any such question, in any other manner, in disregard of such demand. However, a stock vote may always be waived by unanimous consent, and the influence of the average good sense of the members will generally be sufficient to confine the demands for stock voting within reasonable limits. Moreover, when a stock vote has been once taken, a repetition of such vote upon any subsequent question should not consume very much time; for usually the chief causes of delay may be so dealt with on the first occasion as to render expeditious disposition of them upon subsequent ones entirely practicable.

The stock vote upon a motion should be taken by the chairman, with the assistance, if desired, of the secretary. At an election it should be taken by the judges or tellers, assisted,

if necessary, by such clerk or clerks as they may appoint. The duties of the chairman, or of the judges, in taking the vote, are the same as those already stated with respect to the judges at an election by ballot. The stock register of the corporation ordinarily supplies the information from which voting lists may be made, and, to facilitate business, such lists should always be prepared in advance. As each member votes (unless the law requires the voting to be by ballot), his name, and the number of shares upon which he votes, and whether "aye" or "no," upon a motion, or the person for whom, if at an election, should be recorded, and the counting of these votes, and the announcement of the result, will conclude the proceeding upon the question, or the election, as the case may be.

Of the subsidiary motions, but two, in addition to the motion to amend, are generally applicable in corporation meetings, and even they should not be employed without adequate reason. They are the motion to commit, and the motion to definitely postpone.

The motion to commit is used when it is desired that a proposition shall not be considered by the meeting until after it shall have been subjected to the scrutiny of a committee. It suspends action upon the motion to which it is applied, and must be first voted upon. It is amendable and debatable. If carried its effect is to postpone all consideration of the original motion, until the committee shall report; and, therefore, in corporation meetings every motion to commit should include instructions to the committee to report within a period over which the sessions of the meeting will certainly extend.

The motion to postpone to a stated time, to arrive during the continuance of the meeting, may be made when it is preferred that some other business shall be transacted before entering upon that which it is proposed to postpone. Like the motion to commit, it is not declinatory of the motion to which it is applied, but is intended merely to regulate the

order of the proceedings, and, consequently, it does not, if carried, deprive the first mover of his right to have his proposition deliberated upon and decided, but merely postpones its consideration to a time fixed for that purpose by the judgment of the meeting.

The motion to postpone definitely is of higher rank than the motion to commit. It can be made while the latter is pending, and is first to be acted upon. It is amendable and debatable; but the question for debate is as to the propriety of the proposed postponement, and not as to the merits of the proposition to be postponed; just as upon a motion to commit, the debate should be confined to the question of commitment, and not be extended to a general discussion of the matter to be committed.

The only incidental motions which may be properly used, and are likely to be made at corporation meetings, are, for the reading of a paper; to limit debate; to determine questions of order; and for recess, or adjournment.

To obtain the reading of the motion or resolution under consideration, no motion is requisite. Every member is entitled, upon request, to have it read, for the information of others, as well as of himself; but if the reading of any other paper is desired, a motion must be made and carried to authorize it. If the paper referred to does not, in any way, relate to the business pending at the time, the motion will not be in order; but, if it be relevant, the meeting must decide whether it will devote requisite time to listening to the reading of it. This motion suspends the business which is in progress at the time it is made, and must, without amendment or debate, be at once put to vote.

The authority of a corporation meeting to limit debate may be doubted, and the power to do so should certainly not be wantonly exercised. The right of discussion, however, may be abused by some members, and is not superior to the right of all others to have the business of the meeting progress with reasonable speed. When, therefore, the minority pro-

tract debate unprofitably, and to the manifest hindrance of business, the majority may, in reason, and therefore in law, rightfully prescribe a just limit to its continuance. This may be done, either by ordering that debate upon the pending question shall wholly cease at a designated future hour, or by restricting each member to a single speech, and to a specified time for its delivery. If the occasion be such as in fairness warrants the taking of any action to close discussion, the adoption of either of the motions just indicated would be a proper method of doing so. No member could complain that, under the operation of either of them, any especial injustice would be done to him; for the limitation, under one of them, of the right to obtain the floor, and, under the other, of the right to speak, after obtaining it, would apply to all alike.

Motions for closing debate are not themselves debatable, and the question upon any such motion is, of course, to be put in advance of that to which it relates.

No motion is made upon questions of order. They are raised by the member simply stating his point of order to the chair. The decision of the matter is then made by the chairman, subject to appeal, which may be taken by any member rising and saying, "I appeal from the decision of the chair;" but if not seconded, the appeal should not be entertained.

The presentation of a point of order is privileged, and may be made during the pendency of the proposition to which it relates; and it must be decided in advance of such proposition. This is also true of an appeal from the decision of the chair upon such a question.

Appeals are, in general, debatable, and it is proper that the chairman should state to the meeting his reasons for the ruling appealed from.

The form for putting the question upon an appeal is: Shall the decision of the chair stand as the judgment of the meeting?

A motion to adjourn, or for a recess, is in order whenever

the member can secure the floor for the purpose of making it, unless the meeting has just decided adversely upon a similar motion, and no other business has intervened; or unless a time has already been fixed for adjournment.

In its simple form, this motion is neither amendable nor debatable; but it is subject to both amendment and debate whenever it includes more than the mere proposition to adjourn, as that the adjournment shall be to a certain time, or to a particular place.

Some of the motions which are *not* appropriate to corporate meetings will now be referred to, by way of illustration, for the purpose of indicating the nature of the reasoning which supports the statement heretofore made, that many of the devices and expedients of parliamentary practice, which may be used with advantage in other assemblies, cannot be either usefully or rightfully employed in the meetings of corporations. The machinery of parliamentary law is not designed for indiscriminate operation, and so few persons are learned in the science of that law, or skilled in the art of applying it, that unnecessary use of the forms which it supplies for the promotion of order is likely to be productive only of confusion. The law is solicitous not as to matters of form, but only that the means by which any material result is attained, shall be such as to justify the acceptance of that result as the adequately expressed will of the body; and no member is entitled to insist upon methods of procedure which cannot advance his own rights, or which would be subversive of the rights of others.

In legislative assemblies, when a resolution has been offered and seconded, the presiding officer usually puts the question: "Will the house consider the resolution?" This is called the question of consideration, and it is put before amendment offered, or debate entered upon. It is not debatable, and, if determined in the negative, no discussion of, or action upon the motion to which it relates, can be had.

Refusal to consider a motion may rest upon reason, as that

it is frivolous, scandalous, or otherwise unfit for consideration; or the refusal may be entirely arbitrary. If objection to a motion is based upon grounds which would clearly warrant a corporation meeting in refusing to consider it, the same end may be more expeditiously attained by a decision of the chair, ruling it to be not in order; and if the objection is not based upon such grounds, the majority of the meeting would not, as has been shown, be justified in wholly declining to entertain the motion.

The motion for indefinite postponement is debatable, and under it the merits of the motion to which it relates are open for discussion; but it cuts off amendment, and if carried in a corporation meeting, its effect would always be to defeat the main proposition; and, therefore, as but little inconvenience is likely to arise from according to every member the right of amendment, with respect to any proposition which a majority does not desire to consider, the better course, and that which, upon judicial investigation, could scarcely fail of approval, is to reject the motion for indefinite postponement, and to require that the fate of the main motion shall be decided by a vote directly upon it.

The motion to lay upon the table is not debatable; and its effect, if carried, is to postpone the consideration of the main motion until the meeting shall, at some future time, see proper to take it up. Therefore, its use would conflict with the first mover's right to have his motion considered and acted upon, because if the majority should not see proper to take it up at all, the consequence would be that it never could be considered. The right of every meeting to determine the order in which it will deliberate and act upon the various propositions submitted to it is not doubted; but that right can best be exercised by the adoption of a motion to definitely postpone, or to commit, any proposition the consideration of which it is desired to delay.

An occasion might be mentioned, upon which a corporation meeting, largely composed of educated men, was much

embarrassed by a call for the previous question. The member who made it was unable to explain its precise purpose or effect, or to state the proceedings to ensue in consequence of the call. The chairman, a gentleman of intelligence, but probably without much experience in deliberative assemblies, was utterly at a loss to dispose of the subject; and yet it is perfectly clear that he should have ruled that the previous question is an instrument that could not be used in such a meeting, and that, therefore, the call was not in order.

It may be doubted whether this method of suppressing debate and precluding further amendment is warranted, in any case, by the parliamentary common law. Its use by the House of Representatives of the United States is especially provided for and regulated by one of the standing rules of that body, and it is not used at all by the Senate, although its rules do not expressly inhibit it.

Apart from this, however, it is probably less understood than any other of the processes known to parliamentary practice; and, therefore, all that has been said in objection to the unnecessary employment of those processes is of especial force when applied to it. If supported it cuts off all further amendment, and does not merely limit future debate, but terminates discussion wholly and at once. In these respects it differs from the motions to limit debate, which have been already considered, and through which all the rightful authority of a corporation meeting to restrain discussion may be exercised.

In conclusion, it may be said that the course of procedure in corporation meetings should be rational, systematic, and as simple as possible; and that it must conform to law, and admit of the exercise of every right by every member. If this has been made apparent, and if you have been persuaded that the subject is one which merits your attention, the main objects of this address have been attained.

Any portion of the law which relates to corporations may demand your most careful investigation. The number of

these artificial persons has grown so great, under liberal statutory provisions for their creation, that it might almost be supposed to be a mandate of the law that they shall increase and multiply; and they form so important a class of our business community that no lawyer can safely omit to instruct himself upon any matter which concerns them. They have become our chief bankers, transporters, manufacturers, and miners. They build and navigate our ships; construct and operate our telegraphs; and insure our property, our titles, and our lives. They provide graves for our dead bodies, and administer our estates; and, mindful of our immortal part as well, they include even the support of public worship within the scope of their beneficence. Who shall say that the methods employed for the ascertainment of the will of any of them are not worthy the consideration of our profession?

IV.

FORMS.

I. Corporations of the First Class.
- (*a*) Certificate of Incorporation.
- (*b*) Public Notice.
- (*c*) Proof of Publication.
- (*d*) Decree.
- (*e*) Petition for Amendment of Charter of Corporation of First Class.
- (*f*) Interlocutory Decree.
- (*g*) Public Notice.
- (*h*) Final Decree.
- (*i*) Application for Charter of a Church.

II. Corporations of the Second Class.
- (*a*) Rules Governing Applications for Letters-Patent Issued by the Secretary of the Commonwealth.
- (*b*) Application for Charter of Second Class.
- (*c*) Proof of Publication.
- (*d*) Letters-Patent.
- (*e*) Charter for Building and Loan Associations.
- (*f*) Water, Gas, Electric, Heat, and Fuel Companies.
- (*g*) Acceptance of Act of May 8, 1889, by Electric Light, Heat, and Power Companies.
- (*h*) Title Insurance and Trust Companies.
- (*i*) Iron and Steel Companies.
- (*j*) Road Companies.
- (*k*) Manufacturing Companies.
- (*l*) General Telegraph Companies.
- (*m*) Telegraph Companies for Private Use, and Police, Fire Alarm, and Messenger Business.
- (*n*) Ferry, Wharf, and Bridge Companies.
- (*o*) Amendment of Charter of Corporation of the Second Class.

III. Charter of Natural Gas Company.

IV. Certificate of Organization of Co-Operative Association.

V. Certificate of Organization of Corporation for the Encouragement of Arts and Sciences.

VI. Re-Organization by Purchasers of Property and Franchises.

VII. Re-Charter of Corporation.

VIII. Proceedings Upon Increase of Capital Stock.

IX. Acceptance of Constitution and Act of 1874.

X. Certificate of Foreign Corporations.

XI. Statement of Foreign Corporations.

XII. Certificate of Secretary of the Commonwealth as to Foreign Corporations.
XIII. Proceedings for Dissolution of Corporations.
XIV. By-Laws.
(*a*) By-Laws of Manufacturing Company.
(*b*) By-Laws of Trust Company.
(*c*) By-Laws of a Club.
(*d*) By-Laws of a Building and Loan Association.

I. Corporations of the First Class.

(*a*) CERTIFICATE OF INCORPORATION.

Be it known that the subscribers, having associated themselves together for the purpose of
and being desirous of becoming incorporated agreeably to the provisions of the Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29, Anno Domini 1874, and its supplements, do hereby certify that the following are the purposes and objects of their said association:

I. The name of the corporation is

II. The purpose for which the corporation is formed is

III. The business of the said corporation is to be transacted at

IV. The corporation is to exist for the term of years.[1]

V. The names and residences of the subscribers, and the number of shares subscribed by each are as follows:[2]

NAME.	RESIDENCE.	NO. OF SHARES.

VI. The business of the corporation is to be managed by a board of directors [or trustees], consisting of

[1] The word "perpetual" may be inserted in the blank space, or the whole clause may read: "The corporation is to exist perpetually."

[2] If the proposed corporation is not a stock company, this article will be: "V. The names and residences of the subscribers are as follows:

NAME.	RESIDENCE.

The corporation has no capital stock."

members and the names and residences of those chosen directors [or trustees] for the first year are:

NAME.	RESIDENCE.

VII. The amount of the capital stock of the said corporation is dollars, divided into shares of the par value of dollars.[3]

VIII. The yearly income of the corporation, other than that derived from real estate, will not exceed the sum of dollars.

IX. Future members are to be chosen by the board of directors [or by such body or in such manner as may be prescribed by the by-laws].[4]

Witness our hands and seals this day of Anno Domini 18 .[5]

[L. S.]
[L. S.]
[L. S.]
[L. S.]
[L. S.]

Commonwealth of Pennsylvania, } *ss:*
County of }

Before me, the subscriber,
personally appeared

[3] If not a stock company this article will be omitted.

[4] Permanent Relief Assn. of Glade, 3 Dist. Rep. 236 (1894); Skandinaviska Brodroforeningen Svea, 15 Pa. C. C. R. 516; Mut. Benefit Assn., 4 Dist. Rep. 367 (1895); Firemen's Relief Assn., 6 Dist. Rep. 477 (1897); Fort Washington Hist. Soc., 20 Pa. C. C. R. 84 (1897). But see Continental Mut. Ben. Soc., 7 Dist. Rep. 167.

[5] In an application for a charter for a church there must, in addition to the above requirements, also be a provision securing the control and disposition of the real and personal property to the lay-members thereof as required by the Act of April 26, 1855, as amended by the Act of June 2, 1887, P. L. 298. For cases on this subject, see Section 22, *supra;* see form of church charter, *infra.*

three of the subscribers to the above and foregoing certificate of incorporation of
and in due form of law acknowledged the same to be their act and deed.

Witness my hand and official seal this day of Anno Domini
[SEAL.]

(*b*) PUBLIC NOTICE.

In the Court of Common Pleas, for the County of
Of Term No.

Notice is hereby given that an application will be made to the said court on 189 , at 10 A. M., under the Act of Assembly of the Commonwealth of Pennsylvania, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, for the charter of an intended corporation to be called the character and object whereof is
and for these purposes to have, possess, and enjoy all the rights, benefits, and privileges of the said Act of Assembly and its supplements.

The proposed charter is now on file in the prothonotary's office.

Solicitor.[6]

(*c*) PROOF OF PUBLICATION AND CITIZENSHIP.

In the Court of Common Pleas of County.
Of Term No.

[6] See Chapter VI, NOTICE OF APPLICATION—ADVERTISEMENT.

[Insert printed copy of advertisement.]

being duly says that the above advertisement has been published for three weeks in and two newspapers of general circulation printed in the county of and has also been published for three weeks in [legal publications required by local statutes and rules of court].
and further that three of the subscribers to the said charter herewith presented, viz.:
are citizens of the Commonwealth of Pennsylvania.

and subscribed before me this
day of A. D.

(*d*) DECREE.

[To be indorsed on Charter.]

In the Court of Common Pleas of County.
Of Term 189 . No.

And now this day of A. D. 189 , the within charter and certificate of incorporation having been presented to me, a law judge of said county, accompanied by due proof of publication of the notice of this application as required by the Act of Assembly [and rule of this court] in such case made and provided, I certify that I have examined and perused the said writing, and have found the same to be in proper form, and within the purposes named in the first class specified in Section 2 of the Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, and the same appearing to be lawful and not injurious to the community, I do hereby on motion of Esquire, on

behalf of the petitioners, order and direct that the said charter of aforesaid be and the same is hereby approved, and that upon the recording of the same and of this order, the subscribers thereto and their associates shall be a corporation by the name of
for the purposes and upon the terms therein stated.

[L. S.]

Recorded in the office for recording of deeds, in and for the county of in Book page
Witness my hand and seal of office this day of Anno Domini 189 .
[L. S.]

Recorder of Deeds.

(*e*) PETITION FOR AMENDMENT OF CHARTER OF CORPORATION OF FIRST CLASS.

To the Honorable the Judges of the Court of Common Pleas of County.

The petition of the [naming corporation] respectfully represents: That it is an association incorporated as a corporation of the first class under the provisions of the Act of April 29, 1874, entitled "An act to provide for the incorporation and regulation of certain corporations," and its supplements, and that its charter was duly granted by your honorable court on the day of 18 , and is recorded in [place of record].

That pursuant to the provisions of the said Acts of Assembly it is desirous of altering and amending its said charter in accordance with the action of the corporators, who, at a meeting regularly convened and held on the day of 18 , adopted the following proposed changes therein, namely:

[Here specify the amendments adopted.]

Your petitioner therefore prays your honorable court to order and decree that the amendments above specified be approved and made part of the charter of the said

In witness whereof the corporate seal of the said corporation has been hereto affixed, duly attested, this day of , 18 .

[SEAL.] A. B.
Attest: President.
C. D.,
Secretary.

[To be acknowledged in the form of acknowledgment for corporations.]

(*f*) INTERLOCUTORY DECREE.

And now, , 18 , the within petition having been presented and read, and it appearing to the court that the alterations and amendments as therein prayed for are lawful and beneficial, and not in conflict with the requirements of the Constitution or laws of this Commonwealth, it is therefore ordered that notice of the pending application be given, according to the provisions of the third section of the act "to provide for the incorporation and regulation of certain corporations," approved April 29, 1874.

By the Court:

(*g*) PUBLIC NOTICE.

In the Court of Common Pleas of County
Of Term 189 . No.

Notice is hereby given that an application will be made to the said court in , at 10 A. M., under the Act

of Assembly of the Commonwealth of Pennsylvania, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, for the approval of certain amendments to the charter of as set forth in the petition for the allowance of said amendments, filed in said court.

Solicitor.

(*h*) FINAL DECREE.

And now this day of A. D. 189 , the within amendments, alterations, and improvements, having been presented to this court, accompanied by due proof of publication of notice thereof, and no cause having been shown to the contrary, it is ordered and decreed that upon the recording of the same, the said amendments, alterations, and improvements shall be deemed and taken to be part of the charter of the said corporation.

Per Curiam.[7]

(*i*) APPLICATION FOR CHARTER OF A CHURCH.

To the Honorable the Judges of the Court of Common Pleas of County.

In compliance with the requirements of an Act of the General Assembly, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and its several supplements, the undersigned, of whom are citizens of Pennsylvania, having associated themselves together for the support of public worship, and desiring that they may be incorporated according to law, do hereby certify that:

[7] See Chapter XII, AMENDMENTS OF CHARTER.

First. The name of the proposed corporation is

Second. The purpose of said corporation is the support of the public worship of Almighty God, according to the faith, doctrine, discipline, and usages of the [naming denomination].

Third. The business of said corporation is to be transacted at

Fourth. The said corporation is to have perpetual existence.

Fifth. The number of trustees of said corporation is fixed at , a majority of whom shall be lay-members. The names and residences of those trustees for the first year are

Sixth. The yearly income of said corporation, other than that derived from real estate, is not to exceed the sum of dollars.

Seventh. Any property, real or personal, which may be bequeathed, devised, or conveyed to said corporation, shall be taken, held, and enure thereto, subject to the control and disposition of the lay-members thereof, or such constituted officers or representatives of the same as shall be composed of a majority of lay-members, citizens of this Commonwealth, having a controlling power according to the rules, regulations, usages, or corporate requirements of said corporation.[8]

Witness our hands and seals this day of 18 .

[Names and residences of five of the corporators.]

II. Corporations of the Second Class.

(*a*) RULES GOVERNING APPLICATIONS FOR LETTERS-PATENT, ETC., ISSUED BY THE SECRETARY OF THE COMMONWEALTH.

The following rules governing the applications for and

[8] See Section 22.

the granting of letters-patent, and concerning the practice of this office with reference to corporations, founded upon the Acts of Assembly and the opinions of the attorney-general, are submitted for the guidance of those interested:

NOTICES.

The notice of an intention to apply for a charter must give the names of five subscribers, designate the time when application will be made to the governor for the charter, the Act of Assembly under which it is made, and the purpose proposed.

Twenty-one days' notice must be given of the intended application, by advertisement in two newspapers of general circulation, printed in the county where the corporate functions are to be exercised.

Legal or technical publications are not regarded as in this class; but additional publication can be made in them, if desired.

The proof of the publication of the notice must be filed in this office upon the maturity of the certificate.

FILING OF CERTIFICATE.

The certificate of organization should be on file in this office during the period of publication, and the fee for letters-patent and bonus fee should accompany the application.

This rule greatly facilitates business, as applications are examined when received, and needed changes or corrections can thus be made before the maturity of the notice.

Re-advertisement will be required on applications received thirty days after the time designated in the notice.

Attorneys or others who have forwarded papers to this office, and on which no further action has been taken, will, after sixty days from such receipt, be requested to complete the same, or they will be either returned or certified to the attorney-general for such action as he may deem proper.

CONTENTS OF CERTIFICATE AND STATEMENT OF PURPOSE.

The certificate must have at least five subscribers, three of whom must be citizens of this Commonwealth, and be acknowledged and verified by at least three of the subscribers before the recorder of deeds or a notary public.

The object of the corporation should be restricted to the purpose set forth distinctly in one clause of the incorporation act, and be so concisely stated as to avoid all diversity.

Special care should be taken that only the purpose is stated, and not the powers which come to the corporation by grant of law.

Certificates for enumerated objects and "other purposes," for mining for "minerals;" "dealing in," for "buying and selling real estate," when manufacturing companies are referred to; and certificates containing indefinite, irrevelant, or unnecessary statements will not be approved.

FEES.[9]

Statement of fees for filing and recording certain papers in the office of the secretary of the Commonwealth, and for the issuing of letters-patent to corporations.

For filing and recording papers relating to—	
Enlargement of territory of Natural Gas Company,	$15 00
Extension of Route of Street Railway,	15 00
Election Return on increase or decrease of Capital Stock or Indebtedness, when notice of meeting has been published for sixty days,	30 00
Same, when publication of notice has been waived,	35 00
Return of President or Treasurer of actual increase or decrease of Capital Stock or Indebtedness,	5 00

[9] All fees must be paid in full, and also the whole of bonus, before papers can be marked filed and recorded, or letters-patent can be issued by the governor.

Certificate of Dissolution of a Corporation, ...	$10 00
Foreign Corporation, statement of Location of Office, ...	10 75
Acceptance of Constitution and Act of Assembly, ...	10 00
	10 00
Change of corporate name, ...	10 00
Re-organization after judicial sale, including acceptance of the Constitution, ...	40 00
Articles of Co-operative Associations (including copies), ...	26 00
Agreement of Merger and Consolidation, ...	55 00
For letters-patent for—	
Re-charter, including acceptance of Constitution or Act, ...	40 00
Insurance Companies, including statements, ...	37 00
Railroad Companies (Steam or Street), ...	82 00
Amendment to charter, except to railroad companies, ...	30 00
All other corporations, ...	30 00

Whenever the certificate of organization of a proposed corporation is received, and is found not to be in proper form, it will be promptly returned for correction. When thus returned, a new certificate conforming to the law and to the requirements of this office should at once be prepared, executed, and forwarded for approval.

The designated place of business of the corporation is where the corporate functions are to be exercised, and only one office can be named as such.

A married woman cannot be named as a director, treasurer, or one of the five subscribers to the articles of incorporation, and evidence must be filed to show that they are unmarried, if it is desired to include them.

TIME OF APPLICATION.

Charters will not be granted on Saturday, or on any legal holiday, as the State treasury is closed on these days.

PROTESTS AND HEARINGS.

Protests against the issuing of letters-patent upon any application should be filed in this office as soon after the first publication of notice as practicable. The protest should briefly set forth the ground of opposition and the interest of the protestants; and must be specific, giving the full and correct name of the company against whose application it is filed, and designating the date when the application is advertised to be made. A day for hearing will then be appointed, at which time all parties will be heard by counsel or in person.

INCREASE AND DECREASE OF STOCK AND INDEBTEDNESS.

Returns of election upon increase or decrease of capital stock should not be combined with the returns of election upon increase or decrease of indebtedness. The return of the president or treasurer as to the actual making of the authorized increase or decrease should be made separately from the election return, and not attached thereto, and is required by law to be made within thirty days after the actual increase or decrease. The return of increase should specify the terms thereof, whether for cash, for materials, labor, or property.

Waivers of notice of publication should be accompanied by the affidavit of the secretary, showing that the persons subscribing to the waiver are the owners of all the capital stock of the corporation.

CO-OPERATIVE ASSOCIATIONS.

Co-operative associations are corporations, and are subject to all the requirements of the corporation laws as to bonus and fees due the State. The amount of the original capital must be specified in the articles of association. The purpose of the association and the terms upon which persons may become members should be clearly and succinctly stated.

FOREIGN CORPORATIONS.

Foreign corporations which have an established agent, office, or place of business in this State or send their traveling agents, salesmen, or solicitors into this State for the purpose of soliciting trade, or send their goods to merchants, or houses in this State, to be sold on commission, should file a statement locating an office and naming an agent, upon whom process may be served.

BONUS AND FEES.

Upon the granting of a charter the whole of bonus, which is one-third of one per centum of the capital stock, is payable through this office by all corporations except railroad, turnpike, bridge, and cemetery companies, and building and loan associations; and checks or drafts therefor should be drawn to the order of the "State treasurer;" all other checks and drafts should be drawn to the order of the "secretary of the Commonwealth." [For statement of fees see pages 1196 and 1197.]

BLANK FORMS.

Blanks for applications for charters, proof of publication, increase or decrease of capital stock or indebtedness, president's returns, waivers, and statements by foreign corporations, etc., will be furnished on application.

(*b*) APPLICATION FOR CHARTER OF SECOND CLASS.

To the Governor of the Commonwealth of Pennsylvania.

SIR:—In compliance with the requirements of an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29, A. D. 1874, and the several supplements thereto, the undersigned,

of whom are citizens of Pennsylvania, having associated themselves together for the purpose hereinafter specified, and desiring that they may be incorporated, and that letters-patent may issue to them and their successors according to law, do hereby certify:

First. The name of the proposed corporation is

Second. Said corporation is formed for the purpose of

Third. The business of said corporation is to be transacted in

Fourth. Said corporation is to exist for the term of years.

Fifth. The names and residences of the subscribers and the number of shares subscribed by each are as follows:

NAME.	RESIDENCE.	NO. OF SHARES.

Sixth. The number of directors of said corporation is fixed at , and the names and residences of the directors who are chosen directors for the first year are as follows:

NAME.	RESIDENCE.

Seventh. The amount of the capital stock of said corporation is $, divided into shares of the par value of $, and $, being ten per centum of the capital stock, has been paid in cash to the treasurer of said corporation, whose name and residence are

[L. S.]
[L. S.]
[L. S.]
[L. S.]
[L. S.]

State of Pennsylvania, } ss:
County of }

Before me, , in and for the county aforesaid, personally came the above named
who in due form of law acknowledged the foregoing instrument to be their act and deed for the purpose therein specified.

Witness my hand and seal of office, the day of A. D. 189 .

[SEAL.]

State of Pennsylvania, } ss:
County of }

Personally appeared before me, this day of A. D. 189 ,
who being duly sworn, according to law, depose and say that the statements contained in the foregoing instrument are true.

Sworn and subscribed before me, the day and year aforesaid.

[SEAL.]

[Indorsed.]

EXECUTIVE CHAMBER.

Harrisburg, 189 .

To the Secretary of the Commonwealth:

Having examined the within application and found it to be in proper form, and within the purposes of the class of corporations specified in Section 2, of the act entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29, A. D. 1874, and the several supplements thereto, I hereby approve the same, and direct that letters-patent issue according to law.

Governor.

Secretary's Office, Pennsylvania, *ss:*

Enrolled in Charter Book No. . Page

Witness my hand and seal of office, at Harrisburg, this day of A. D. 189.

[SEAL.]

Secretary of the Commonwealth.

(*c*) PROOF OF PUBLICATION.

Attach copy of notice here. | Attach copy of notice here.

State of Pennsylvania, } *ss:*
County of }

being duly sworn, doth depose and say: That he is one of the corporators of the

That a notice of which the above are copies was published in the , both newspapers of general circulation, printed and published in the County of , State of Pennsylvania.

The said notice was published, to wit:

In the on the days of 189 .

In the on the days of 189 .

Sworn and subscribed before me, this day of 189 .

[SEAL.]

(*d*) LETTERS-PATENT.

In the name and by authority of the Commonwealth of Pennsylvania, Executive Department.

To all to whom these presents shall come, greeting:

Whereas, In and by an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled, "An act to provide for the incorporation and regulation of certain corporations," approved April 29, A. D. 1874, and the supplements thereto, the governor of this Commonwealth is authorized and required to issue letters-patent to all corporations formed under the provisions of said acts, embraced within the second class named therein.

And whereas, The stipulations and conditions in said Act of the General Assembly, and the supplements thereto, have been fully complied with by

Therefore, know ye, That under authority of the Constitution and laws of said Commonwealth, in such case made and provided, I do by these presents, which I have caused to be made patent and sealed with the Great Seal of the State, create, erect, and incorporate the subscribers to the stock of said corporation, their associates and successors, and also those who may thereafter become subscribers or holders of the stock of the said corporation, into a body politic and corporate in deed and in law, by the name chosen and hereinbefore specified, who shall have succession and shall be invested with, and have and enjoy all the powers, privileges, and franchises incident to a corporation, and be subject to all the duties, requirements, and restrictions specified and enjoined in and by the said Acts of the General Assembly and all other laws of this Commonwealth.

Given under my hand and the Great Seal of the State, at the city of Harrisburg, this day of , in the year of our Lord, 18 , and of the Commonwealth one hundred and

By the Governor:

[SEAL.]

Secretary of the Commonwealth.

(*e*) CHARTER FOR BUILDING AND LOAN ASSOCIATIONS AND MUTUAL SAVING FUNDS.

To the Governor of the Commonwealth of Pennsylvania.

SIR:—In compliance with the requirements of an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29, A. D. 1874, and the several supplements thereto, the undersigned, of whom are citizens of Pennsylvania, having associated themselves together for the purpose of organizing a building and loan association, and desiring that they may be incorporated, and that letters-patent may issue to them and their successors according to law, do hereby certify:

First. The name of the proposed corporation is

Second. Said corporation is formed for the purpose of accumulating a fund by the periodical contributions of the members thereof, and of safely investing the same.

Third. The business of said corporation is to be transacted in

Fourth. Said corporation is to exist for the term of years.

Fifth. The names and residences of the subscribers and the number of shares subscribed by each are as follows:

NAME.	RESIDENCE.	NO. OF SHARES.

Sixth. The number of directors of said corporation is fixed at , and the names and residences of the directors who are chosen directors for the year are as follows:

NAME.	RESIDENCE.

Seventh. The amount of the capital stock of said corporation is $ divided into shares of the par value of $

Eighth. That in accordance with the provisions of an act, entitled "An act relating to mutual saving fund, building and loan associations, regulating the mode of charging premiums, bonus, or interest in advance, of withdrawals, of repayment and collection of loans, also restricting the power to levy excessive fines, and defining the rights and liabilities of married women, stockholders, and prescribing the non-application to these associations of the bonus tax and registry laws for corporations," approved April 10, 1879; the premium or bonus bid for the prior right to a loan shall

[SEAL.] [SEAL.]
[SEAL.] [SEAL.]
[SEAL.]

State of Pennsylvania, } *ss:*
County of }

Before me in and for the county aforesaid, personally came the above named , who in due form of law, acknowledged the foregoing instrument to be their act and deed for the purposes therein specified.

Witness my hand and seal of office, the day of A. D. 189 .

[SEAL.]

State of Pennsylvania, } *ss:*
County of }

Personally appeared before me, this day of A. D. 189 , who being duly sworn, according to law, depose and say that the statements contained in the foregoing instrument are true.

Sworn and subscribed before me, this
day of A. D. 189 .

[SEAL.]

[Indorsed.]

EXECUTIVE CHAMBER.

Harrisburg, 189 .

To the Secretary of the Commonwealth:

Having examined the within application and found it to be in proper form, and within the purposes of the class of corporations specified in Section 2 of the act, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29, A. D. 1874, and an act, entitled "An act relating to mutual saving fund, building and loan associations," etc., approved April 10, 1879, I hereby approve the same, and direct that letters-patent issue according to law.

Governor.

Secretary's Office, Pennsylvania, *ss:*
Enrolled in Charter Book No. , Page .

Witness my hand and seal of office, at Harrisburg, this day of A. D. 189 .

Secretary of the Commonwealth.

[SEAL.]

(*f*) WATER, GAS, ELECTRIC, HEAT, AND FUEL COMPANIES.

The purpose of a water company may be stated as follows:

"Clause 2. Said corporation is formed for the purpose of supplying water to the public in the borough [or township] of , and to such persons, partnerships, and associations residing in or adjacent thereto as may desire the same."

The purpose of a gas company may be stated as follows:

"Clause 2. Said corporation is formed for the purpose of manufacturing and supplying gas to the public in the bor-

ough [or city] of , and to such persons, partnerships, and associations residing in or adjacent thereto as may desire the same."

The purpose of a steam heat company may be stated as follows:

"Clause 2. Said corporation is formed for the purpose of manufacturing and supplying heat by means of steam in the city [or borough] of , and to such persons, partnerships, and associations residing in, or adjacent thereto, as may desire the same."

The purpose of an electric light company may be stated as follows:

"Clause 2. Said corporation is formed for the purpose of manufacturing and supplying light by means of electricity in the city [or borough] of , or to such persons, partnerships, and associations residing in or adjacent thereto as may desire the same."[10]

(g) ACCEPTANCE OF ACT OF MAY 8, 1889, BY ELECTRIC LIGHT, HEAT, AND POWER COMPANIES.

To the Governor of the Commonwealth of Pennsylvania:

The Company, an association of persons or corporation heretofore engaged in the business of supplying light, heat, and power, or some of them, by electricity, under color of a charter or letters-patent of this Commonwealth, issued under the provisions of an act, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29, A. D. 1874, dated the day of A. D. 18 , hereby files its letters-patent and certifies under the seal of the company:

That the stockholders of said corporation, at a meeting duly held, have accepted and hereby do accept the provisions

[10] See Chapter LXXXII, WATER, LIGHT, HEAT, FUEL, AND POWER COMPANIES.

of an act, entitled "An act to amend an act entitled 'An act to provide for the incorporation and regulation of certain corporations,' approved April 29, A. D. 1874, providing for the incorporation and regulation of electric light, heat, and power companies," approved May 8, A. D. 1889, and have authorized and directed the execution and filing of this certificate and the surrender and filing herewith of its letters-patent, for the purpose of having new letters-patent issued to said corporation.

And it is hereby further certified and declared as follows:

First. That the name of the said company is

Second. That said company is formed for the purpose of supplying light, heat, and power, by electricity, to the public at the of , and to such persons, partnerships, and corporations residing therein or adjacent thereto as may desire the same.

Third. The business of said company is to be transacted in the

Fourth. Said company is to exist

Fifth. The amount of the capital stock of said company is dollars, divided into shares of the par value of dollars each.

In testimony whereof, The company has hereunto affixed its corporate seal and caused this certificate to be signed and attested by its president and secretary, this day of A. D. 1889.

[SEAL.]

President.

Attest:

Secretary.

State of Pennsylvania, } *ss:*
County of }

Be it remembered, That on the day of A. D. 1889, before me, , in and for said county, personally appeared , president, and

secretary, of the company, who, being duly sworn, depose and say that they were personally present at the execution of the above written certificate, and saw the common seal of the said corporation duly affixed thereto, and that the seal so affixed thereto is the common and corporate seal of the said company, and that the above written instrument or certificate was duly signed, sealed, and delivered by and as and for the act and deed of the said company for the uses and purposes therein mentioned; and that the names of these deponents, subscribed to the said certificate as the president and as the secretary of the said corporation, in attestation of the due execution and delivery of the said certificate, are of these deponents' own proper and respective handwriting.

Sworn and subscribed before me the day and year above written.

Witness my hand and seal.

[SEAL.]

(*h*) TITLE INSURANCE AND TRUST COMPANIES.

The purpose of a title insurance company may be stated as follows:

"Clause 2. Said corporation is formed for the purpose of insuring owners of real estate, mortgagees, and others interested in real estate from loss by reason of defective titles, liens, and incumbrances, and for that purpose to have and enjoy all the powers and privileges conferred upon such companies by the said Act of Assembly, and the various supplements thereto."

To incorporate a trust company it is necessary to take out a charter as a title insurance company in the manner above suggested, and then to accept the title and trust companies Act of May 9, 1889. The following form of acceptance is suggested:

, a corporation of the Commonwealth of Pennsylvania, incorporated under the Act of April 29, 1874, entitled "An act to provide for the incorporation and regulation of certain corporations," and the supplements thereto, hereby certifies under its corporate seal that at a duly convened meeting of the directors of said corporation held at its principal office in the city of , Pennsylvania, on the day of , 18 , the following resolutions were adopted:

"Resolved, That this corporation accepts the provisions of the Act of the General Assembly of the Commonwealth of Pennsylvania, approved May 9, A. D. 1889, entitled 'An act supplementary to an act entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29, A. D. 1874, amending the twenty-ninth section of said act so as to provide for the further regulation of and granting additional powers to all corporations now or hereafter incorporated under the provisions of said act for the insurance of owners of real estate, mortgagees, and others interested in real estate from loss by reason of defective titles, liens, and incumbrances.' "

"Resolved, That the president and secretary are hereby authorized and directed to execute, under the corporate seal, a certificate of acceptance of said act by this corporation, and to file the same in the office of the secretary of the Commonwealth."

That in pursuance of said resolutions the said corporation , hereby accepts the aforesaid Act of Assembly of said Commonwealth, approved May 9, 1889, entitled "An act supplementary to an act entitled 'An act to provide for the incorporation and regulation of certain corporations,' approved April 29, A. D. 1874, amending the twenty-ninth section of said act so as to provide for the further regulation of and granting additional powers to all corporations now or hereafter incorporated under the provisions of said act for the insurance of owners of real estate,

mortgagees, and others interested in real estate from loss by reason of defective titles, liens, and incumbrances.[11]

Witness the corporate seal of the said , duly attested, this day of , A. D. 18 , by

President.

[CORPORATE SEAL].

Attest:

Secretary.

State of Pennsylvania, } ss:
City of Philadelphia, }

being duly sworn, says, That he is the treasurer of ; that said company has a paid up capital of

Sworn and subscribed before me, this day of , A. D. 189 .

[NOTARIAL SEAL.]

(*i*) IRON AND STEEL COMPANIES.

The purpose of an iron and steel company may be stated as follows:

"Clause 2. Said corporation is formed for the manufacture of iron or steel, or both, of any other metal, or of any article of commerce from wood, or metal, or both, and for that purpose to have and possess the powers and privileges expressed and given in the thirty-eighth section of the Corporation Act of April 29, 1874, and the supplements thereto."[12]

[11] Under the Act of June 26, 1895, a certain class of companies, all of which were probably chartered prior to the Act of April 29, 1874, were given the privileges of the Acts of April 29, 1874, and May 9, 1889, P. L. 159, upon certifying that they had a paid-up capital of not less than $125,000, and upon complying and conforming to all other conditions and requirements of the Acts of April 29, 1874, and May 9, 1889. See Chapter LXXX, TITLE INSURANCE AND TRUST COMPANIES.

[12] It is advisable not to mention any particular article proposed to be

(*j*) ROAD COMPANIES.

The purpose of a road company may be stated as follows:

"Clause 2. Said corporation is formed for the purpose of constructing and maintaining a road."

The kind of road intended to be constructed is

The places from and to which the road is intended to be run are as follows:

The counties through which the road is to pass are , and the estimated length of the road is[13]

(*k*) MANUFACTURING COMPANIES.

The purpose of a manufacturing company may be stated as follows:

"Clause 2. Said corporation is formed for the purpose of manufacturing and selling textile fabrics, and for that purpose to have and possess the powers and privileges expressed and given in the thirty-ninth section of the Corporation Act of April 29, 1874, and the supplements thereto.[14]

(*l*) GENERAL TELEGRAPH COMPANIES.

The purpose of a telegraph company may be stated as follows:

"Clause 2. Said corporation is formed for the purpose of constructing and maintaining a telegraph line.

"The general route of the telegraph line is as follows:

"The points to be connected are"

manufactured. See Chapter LXII, IRON, STEEL, METAL, AND WOOD COMPANIES. See also Sections 26 and 27, *supra*.

[13] The rest of the certificate is similar to that for a general charter.

[14] See Chapter LXVI, MANUFACTURING, MINING, AND QUARRYING COMPANIES. See also Sections 26 and 27 as to conflicting purposes.

(*m*) TELEGRAPH COMPANIES FOR PRIVATE USE, AND POLICE, FIRE ALARM, AND MESSENGER BUSINESS.

The purpose of the company may be stated as follows:

"Clause 2. Said corporation is formed for the purpose of constructing, maintaining, and leasing lines of telegraph for the private use of individuals, firms, corporations, municipal and otherwise, for general business, and for police, fire alarm, or messenger business.

"The counties in this State wherein it is proposed to carry on business are

"The corporation also proposes to carry on business in the State of"[15]

(*n*) FERRY, WHARF, AND BRIDGE COMPANIES.

The purpose of the company may be stated as follows:

"Clause 2. Said corporation is formed for the purpose of the construction and maintenance of

The stream over which the is proposed to be erected [or located] is

The place and county wherein the is to be located is

The distance of the from the nearest [wharf, ferry, or bridge] company, incorporated under the laws of this Commonwealth, over the said stream is[16]

(*o*) AMENDMENT OF CHARTER OF CORPORATION OF THE SECOND CLASS.

To his Excellency, , Governor of Pennsylvania:

[15] If the business of the corporation is to be carried on wholly within the State of Pennsylvania it should be so stated. See Chapter LXXIX, TELEGRAPH COMPANIES.

[16] See Chapter LX, FERRY, WHARF, AND BRIDGE COMPANIES.

In compliance with the authority and requirements of the Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "A supplement to an act entitled 'An act to provide for the incorporation and regulation of certain corporations,' approved April 29, 1874, providing for the improvement, amendment, and alteration of the charters of the corporations of the second class, and authorizing the incorporation of traction motor companies," approved June 13, 1883, the [name of corporation] hereby certifies, under its corporate seal, that it is a corporation created and existing under the Corporation Act of 1874, and its supplements, as shown by its charter and letters-patent dated the day of , 18 , and was formed for the purpose of ; that said corporation hereby applies for an improvement, amendment, and alteration of its charter, the character, purpose, and objects of such improvement, amendment, and alteration being as follows:

[Set out the same specifically.]

In testimony whereof the said by order of its board of directors has hereunto affixed its corporate seal, duly attested by the president and secretary at this day of , 18 .

[SEAL] A. B.,
President.

Attest: C. D.,
Secretary.[17]

State of Pennsylvania, } *ss:*
County of }

Be it remembered, That on the day of A. D. 189 , before me, , in and for said county, personally appeared , president, and secretary, of the above-named

[17] Notice of the application must be advertised once a week for three weeks in two newspapers of general circulation, published in the county wherein the principal office or place of business of the company is located. See Chapter XII, AMENDMENTS OF CHARTER.

corporation , who, being duly sworn, depose and say, that they were personally present at the execution of the above-written certificate, and saw the common seal of the said corporation duly affixed thereto, and that the seal so affixed thereto is the common and corporate seal of the said company, and that the above-written instrument or certificate was duly signed, sealed, and delivered by and as and for the act and deed of the said company for the uses and purposes therein mentioned by authority and direction of the persons and bodies corporate holding a majority in interest of the stock of the said company, and that the names of these deponents, subscribed to the said certificate as the president and the secretary of the said corporation, in attestation of the due execution and delivery of the said certificate, are of these deponents' own proper and respective handwriting.

Sworn and subscribed before me the day and year above-written.

Witness my hand and seal of office.

[SEAL.]

[Indorsed on Certificate.]

EXECUTIVE CHAMBER.

Harrisburg, 189 .

To the Secretary of the Commonwealth:

Having examined the within application and found it to be in proper form, and that the improvements, amendments, and alterations therein asked for are lawful and beneficial, and not injurious to the community, and are in accord with the purposes of the charter, I hereby approve the same and direct that letters-patent issue in the usual form according to law.

Governor.

III. Charter for Natural Gas Company.

To his Excellency, Governor of Pennsylvania.

SIR:—In compliance with the requirements of an Act of

the General Assembly of the Commonwealth of Pennsylvania, entitled "An act to provide for the incorporation and regulation of natural gas companies," approved May 29, A. D. 1885, the undersigned, , of whom are citizens of Pennsylvania, having associated themselves together for the purpose of producing, dealing in, transporting, storing, and supplying natural gas, and desiring that they may be incorporated, and that letters-patent may issue to them and their successors according to law, do hereby certify:

First. The name of the proposed corporation is

Second. Said corporation is formed for the purpose of producing, dealing in, transporting, storing, and supplying natural gas.

Third. The place or places where natural gas is intended to be mined for and produced or received

Fourth. The place or places where it is to be supplied to consumers,

Fifth. The general route of its pipe line or lines and branches is,

Sixth. The general office of said corporation is to be located in

Seventh. Said corporation is to exist for the term of years.

Eighth. The names and residences of the subscribers and the number of shares subscribed by each are as follows:

NAME.	RESIDENCE.	NO. OF SHARES.

Ninth. The number of directors of said corporation is fixed at and the names and residences of the directors who are chosen directors for the first year are as follows:

NAME.	RESIDENCE.

Tenth. The amount of the capital stock of said corpora-

tion is $, divided into shares of the par value of $, and $, being ten per centum of the capital stock, has been paid in cash to the treasurer of said corporation, whose name and residence are:

[SEAL.] [SEAL.]
[SEAL.] [SEAL.]
[SEAL.]

State of Pennsylvania, } *ss:*
County of }

Before me, , in and for the county aforesaid, personally came the above-named who, in due form of law, acknowledged the foregoing instrument to be their act and deed for the purposes therein specified:

Witness my hand and seal of office, the day of A. D. 18 .

[SEAL.]

State of Pennsylvania, } *ss:*
County of }

Personally appeared before me, this day of A. D. 18 , who, being duly sworn, according to law, depose and say that the statements contained in the foregoing instrument are true.

Sworn and subscribed before me, this day of A. D. 18 .

[SEAL.]

[Indorsed.]

EXECUTIVE CHAMBER.

Harrisburg, 18 .

Hon. Secretary of the Commonwealth.

Having examined the within application, and found it to be in proper form, and within the purpose provided for in the act, entitled "An act to provide for the incorporation

and regulation of natural gas companies," approved May 29, A. D. 1885, I hereby approve the same, and direct that letters-patent issue according to law.

Governor.

Secretary's Office, Pennsylvania, *ss:*

Enrolled in Natural Gas Charter Book, No. 1, page

Witness my hand and seal of office, at Harrisburg, this day of A. D. 18 .

[SEAL.]

Secretary of the Commonwealth.

IV. Certificate of Organization of Co-Operative Association.

Articles of association of the Co-operative Association.

We, the undersigned, do hereby form an association for the purpose of carrying on , under the provisions of an Act of General Assembly of the Commonwealth of Pennsylvania, entitled "An act to encourage and authorize the formation of co-operative associations, productive and distributive, by farmers, mechanics, laborers, or other persons," approved June 7, 1887, and for that purpose do make and sign these as our articles of association.

First. The name of the said association is

Second. The principal office of said association is to be located at

Third. The purpose or object for which said association is formed is

Fourth. The capital stock of said association is $

Fifth. The amount of each share of permanent stock is $, and shall be paid for as follows, viz.:

and each share of ordinary stock, $, and shall be paid for as follows, viz.:

Sixth. There shall be $ of capital stock paid in before said association shall commence business.

Seventh. Persons may become members on the following terms, viz:

Eighth. The regular or quarterly meetings of the members shall be held on the of January, April, July, and October of each year.

Ninth. [Other matters.]

Tenth. That the said association is to exist for the term of years .

Eleventh. In witness whereof, the subscribers to these articles of association have hereunto subscribed their names, places of residence, and the number of shares of each or either class of stock which each agrees to take.

NAME.	RESIDENCE.	NO. OF SHARES.	
		PERMANENT STOCK.	ORDINARY STOCK.

State of Pennsylvania, } *ss:*
County of }

Before me, the subscriber, a notary public for the Commonwealth of Pennsylvania, residing at , in the county aforesaid, personally appeared , being five of the subscribers to the above and foregoing articles of association, and in due form of law acknowledged the same as their act and deed for the purposes therein set forth.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal, this day of , 18 .

[SEAL.]

V. Certificate of Organization of Corporation for the Encouragement of the Arts and Sciences.

To his Excellency, , Governor of Pennsylvania.

In compliance with the requirements of the Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An act to provide for the incorporation and regula-

tion of companies not for profit, organized for the encouragement of the arts and sciences, and of agriculture and horticulture, and to confer upon such companies the right of eminent domain," approved June 14, 1887, the undersigned, all of whom are citizens of this Commonwealth, having associated themselves together for the purpose of and desiring that they may be incorporated, and that letters-patent may issue to them and their successors, according to law, do hereby certify:

First. The name of the proposed corporation is

Second. The business of said corporation is to be conducted at

Third. The names and residences of the subscribers are as follows:

NAME.	RESIDENCE.

Fourth. The number of directors of said corporation is fixed at , and the names and residences of those who are chosen directors for the first year as follows:

NAME.	RESIDENCE.

Fifth. The name and address of the treasurer is

[Signed by five incorporators, and acknowledged and sworn to before the recorder of deeds, or a notary public, by three of the signers.]

VI. Re-Organization by Purchasers of Property and Franchises.

Whereas, the property and corporate franchises of the company were sold by at a sale, on the day of to and the said capital and franchises were duly conveyed to the said by deed acknowledged on the day of

It is therefore certified in accordance with the provisions of

the second section of the act, entitled "A supplement to an act entitled 'An act concerning the sale of railroads, canals, turnpikes, bridges, and plank roads,' approved April 8, A. D. 1861, extending the provisions of said act to coal, iron, steel, lumber, or oil or mining, manufacturing, transportation, and telegraph companies in this Commonwealth," approved May 25, A. D. 1878, and the several acts supplementary to and amendatory of this act and the act to which it is a supplement.

First. That the persons for and on whose account the said property and corporate franchises were purchased, did on the day of A. D. 18 , meet in County of , State of Pennsylvania, due public notice of the time and place of said meeting having been given as required by law, and did proceed to organize a new corporation under the laws of the Commonwealth of Pennsylvania.

Second. That the name adopted by the said corporation is

Third. That the amount of the capital stock of said corporation is fixed at $, divided into shares of the par value of $ each.

Fourth. That shares of the par value of $ each, making $ of the capital stock, to be deemed and taken as full paid stock, are to be issued to the persons for and on whose behalf said property, franchises, and rights were purchased in payment for their respective interests in the same as follows:

NAME.	SHARES.	VALUE.

Fifth. That the name of the president of said corporation, elected to serve until , is

Sixth. That the names of the directors of said corporation, elected to serve until , are

NAME.	RESIDENCE.

In testimony whereof, I have hereunto set my hand and caused to be affixed the corporate seal of said company, this day of A. D. 189 .

Attest:

President.

Secretary.

State of Pennsylvania, } *ss:*
County of }

Be it remembered, That on the day of A. D. 189 , before me in and for said county, personally appeared , president, and secretary, of the above-named corporation , who, being duly sworn, depose and say, that they were personally present at the execution of the above-written certificate, and saw the common seal of the said corporation duly affixed thereto, and that the seal so affixed thereto is the common and corporate seal of the said company, and that the above-written instrument or certificate was duly signed, sealed, and delivered by and as and for the act and deed of the said company for the uses and purposes therein mentioned; and that the names of these deponents, subscribed to the said certificate as the president and as the secretary of the said corporation, in attestation of the due execution and delivery of the said certificate, are of these deponents' own proper and respective handwriting.

Sworn and subscribed before me the day and year above-written.

Witness my hand and seal.

[SEAL.]

, a corporation of the Commonwealth of Pennsylvania, organized under and by virtue of an Act of

Assembly of the said Commonwealth, entitled "A supplement to an act, entitled, 'An act concerning the sale of railroads, canals, turnpikes, bridges, and plank roads,' approved April 8, A. D. 1861, extending the provisions of said act to coal, iron, steel, lumber, or oil, or mining, manufacturing, transportation, and telegraph companies in this Commonwealth," approved May 25, A. D. 1878, and the several acts supplementary to and amendatory of this act and the act to which it is a supplement, hereby certifies under the seal of the corporation:

That at a duly convened meeting of the directors of the said corporation, held at its principal office in the , Pennsylvania, on the day of , A. D. 18 , the following resolutions were adopted:

"Resolved, That this corporation accepts the provisions of Article XVI of the Constitution of this Commonwealth adopted December 19, 1873.

"Resolved, That the president and secretary be and are hereby directed to make, under the corporate seal, a certificate of the acceptance of said Article, and to file the same in the office of the secretary of the Commonwealth."

That in pursuance of said resolutions the said corporation hereby accepts the provisions of Article XVI of the Constitution of this Commonwealth.

In testimony whereof the seal of the said corporation was hereto affixed this day of A. D. 189 .

[CORPORATE SEAL.]

President.

Secretary.

VII. Re-Charter of Corporation.

To his Excellency , Governor of Pennsylvania.

In compliance with the requirements of the Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An act to provide for the incorporation and regula-

tion of certain corporations," approved April 29, 1874, the undersigned, of whom are citizens of Pennsylvania, having associated themselves together for the purpose of being re-chartered, and desiring that they may be re-incorporated, and that the letters-patent may issue to them and their successors according to law, do hereby certify that:

First. The name of the proposed corporation is

Second. Said corporation is formed for the purpose of

Third. The business of the corporation is to be transacted at

Fourth. The corporation is to exist for the term of years.

Fifth. The names and residences of the subscribers, and the number of shares subscribed by each, are as follows:

NAME.	RESIDENCE.	NO. OF SHARES.

Sixth. The number of directors of said corporation is fixed at , and the names and residences of the persons who are chosen directors for the first year are as follows:

NAME.	RESIDENCE.

Seventh. The amount of the capital stock of said corporation is $, divided into shares of the par value of and the sum of $, being ten per centum of the capital stock, has been paid in cash to the treasurer of said corporation, whose name and residence is

Eighth. The proposed charter is a renewal of the former charter of the company, which was incorporated on the day of , 18 , under the provisions of the Act of the General Assembly of this Commonwealth, entitled , approved

[Signed by five of the corporators and sealed.]

[Append acknowledgment and affidavit of subscribers as in form of certificate for original incorporation.]

CERTIFICATE OF CONSENT OF STOCKHOLDERS TO RE-CHARTER OF CORPORATION.

To his Excellency Governor of Pennsylvania:

In compliance with the requirements of the Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, we, president and secretary of the company, do hereby certify, that at a meeting of the stockholders of said company, held pursuant to due and legal notices, at its principal office in , on the day of , 18 , the consent of the persons and bodies corporate holding a majority in interest of such corporation was voted in favor of applying for the re-charter of the same.

The financial condition of said company at this date is as follows:

1. Capital stock paid in,
2. Funded debt,
3. Floating debt,
4. Estimated value of property,
5. Cash assets.

We also certify that at the same time and place the said company, by a vote of its stockholders, expressly accepted the provisions of the Constitution of this Commonwealth, and of the General Incorporation Act of April 29, 1874, and surrendered all privileges conferred upon such corporation by its original charter that are not enjoyed by corporations of its class under the said act or the general laws of this Commonwealth.

[SEAL.]

Attest:

President.

Secretary.

VIII. Proceedings Upon Increase of Capital Stock.

Office of the 189 .

I hereby certify that the following resolutions were adopted at a meeting of the board of directors of this company, held on the day of 189 ,

Resolved, That a meeting of the stockholders be called to convene at the general office of the company, on the day of , to take action on approval or disapproval of the proposed increase of the of said company from $ to $, and that the secretary be and is hereby directed to give notice thereof as required by law.

Attest: Secretary.

[SEAL.]

[Attach copy of notice.]

State of Pennsylvania, } *ss:*
County of }

being duly sworn, doth depose and say, that he is of the

That a notice, of which the above is a copy, was published in the , a newspaper of general circulation, printed and published in the county of State of Pennsylvania, once a week, for sixty days, commencing on the day of 189 .

Sworn and subscribed before me, this day of A. D. 189 .

[SEAL.]

State of Pennsylvania, } *ss:*
County of }

On this day of A. D. 189 , personally appeared before me, a , in and for the county aforesaid stockholders, duly appointed judges by the board of directors of the company, to conduct an election of said company, to be held on the day of 189 ,

who being duly sworn or affirmed, do depose and say that they will well and truly, according to law, conduct said election to the best of their ability, and true return make of the same.

Sworn and subscribed before me, the day and year aforesaid.

[SEAL.]

Judges.

We, the undersigned judges, appointed by the board of directors of the company, to conduct an election by the stockholders thereof, for or against an increase of the of the said company from $ to $, do hereby certify, that after being duly sworn, we held the said election at the office of the said company on the day of 189 , the time and place fixed for holding the same, of which sixty days' previous notice by publication was duly given, and in due form and manner, we received the votes of the stockholders of the said company in favor of or against such increase. And at the said election there were voted in favor of said increase shares, and against said increase shares, thereby evincing the consent to the said increase of of the persons or bodies corporate holding the larger amount in value of the capital stock of the said company.

Judges.

[Indorsed.]

189 .

[Name of Corporation.]

ELECTION RETURN ON

Filed in the office of the Secretary of the Commonwealth, on the day of A. D. 189 .

Deputy Secretary of the Commonwealth.

Recorded in Miscellaneous Corporation Record Book, No. , page

RETURN OF THE PRESIDENT OR TREASURER.[18]

To the Hon. Secretary of the Commonwealth.

This is to certify that, by virtue of the consent of the stockholders of the company, authorizing in the thereof, from $ to $, given at an election duly held for that purpose, on the day of A. D. 189 , the of said company has been from $ to $, said additional being issued for

[SEAL.]

State of Pennsylvania, } *ss:*
County of }

above named, being duly sworn, says the facts set forth in the above certificate are correct and true.

Sworn and subscribed before me, this
day of A. D. 189 .

[SEAL.]

189 .

[Name of Corporation.]

RETURN OF

Filed in the office of the Secretary of the Commonwealth, on the day of A. D. 189 .

Deputy Secretary of the Commonwealth.

Recorded in Miscellaneous Corporation Record Book, No. , page

[18] This return must be made either by president or treasurer.

WAIVER OF PUBLICATION OF NOTICE AND FORMAL STOCKHOLDERS' MEETING.

Office of the 189 .

I hereby certify that the following resolution was adopted at a meeting of the board of directors of this company, held on the day of 189 :

Resolved, That a meeting of the stockholders be called to convene at the general office of the company, on the day of , A. D. 189 , to take action on approval or disapproval of the proposed of the of said company from $ to $, and that the secretary be and is hereby directed to give notice thereof as required by law, unless the same be waived by the unanimous consent of the stockholders.

Attest:

[CORPORATE SEAL.] Secretary.

WAIVER OF SIXTY DAYS' NOTICE.

189 .

The undersigned, stockholders in the who are all the stockholders therein and holders of all the stock of said company to the amount set opposite our several names herein, to wit:

NAME.	NO. OF SHARES.

do hereby waive the sixty days' notice of the meeting of the stockholders called for , 189 , required to be given by the seventh section of the sixteenth article of the Constitution of the State of Pennsylvania, and do hereby signify, by this paper, our assent to the of the of said company from $ to $, and desire that the same may be taken as our vote in favor thereof, with like effect as if all the provisions of the Act of Assembly, entitled "An act to pro-

vide for the incorporation and regulation of certain corporations," approved April 29, 1874, relative to the
of the had been fully complied with.

State of Pennsylvania, } *ss:*
County of }

I, secretary of the
being duly sworn, do depose and say that I am the secretary of the said company, that the stock ledger of said company is in my custody and under my control, and that the list of stockholders given in the above waiver of notice of a meeting to be held to vote for or against of is a complete list of such stockholders, and that they are the owners of the entire issue of the stock of said company, and that the signatures to said waiver are genuine and in the proper handwriting of the subscribers.

Sworn and subscribed before me, this
day of 189 .

[SEAL.]

State of Pennsylvania, } *ss:*
County of }

On this day of A. D. 189 , personally appeared before me, a in and for the county aforesaid, stockholders, duly appointed judges, by the board of directors of the company to conduct an election of said company, to be held on the day of , 189 , who being duly sworn or affirmed, do depose and say that they will well and truly, according to law, conduct said election to the best of their ability and true return make of the same.

Sworn and subscribed before me, the
day and year aforesaid.

Judges.

[SEAL.]

We, the undersigned judges, appointed by the board of directors of the company to conduct an election by the stockholders thereof, for or against of the of the said company from $ to $, do hereby certify that, after being duly sworn, we held the said election at the office of the said company on the day of 189 , the time and place fixed for holding the same, of which sixty days' previous notice by publication was duly waived, and in due form and manner we received the votes of the stockholders of the said company in favor of or against such . And at the said election there were voted in favor of said shares, and against said shares, thereby evincing the consent to the said of of the persons or bodies corporate holding the larger amount in value of the capital stock of the said company.

Judges.

[Indorsed.]

189 .

[Name of Company.]

ELECTION RETURN WITH WAIVER ON

Filed in the office of the Secretary of the Commonwealth on the day of A. D. 189 .

Deputy Secretary of the Commonwealth.

Recorded in Miscellaneous Corporation Record Book, No. , page

IX. Acceptance of the Constitution and Corporation Act of 1874.

To the Governor of the Commonwealth of Pennsylvania.

SIR:—The incorporated on the day of A. D. 18 , under the provisions of an Act of the General Assembly of the Com-

monwealth of Pennsylvania, entitled
approved the day of A. D. 18 , and having its location and place of business in
Pennsylvania, hereby certifies under the seal of said corporation:

That the stockholders of said corporation, at a meeting duly called for that purpose, have accepted and hereby do accept the provisions of the Constitution of this Commonwealth and the provisions of an act, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and authorized and directed the execution and filing of this certificate for the purpose of having letters-patent issued to said corporation.

And it is hereby certified and declared as follows:

First. That the name of the said corporation is

Second. That said corporation is formed for the purpose of

Third. That said corporation is to exist for the term of years, to be computed from A. D. 18 .

Fourth. The amount of the capital stock of said corporation is $, divided into shares of the par value of $ each.

In testimony whereof the said corporation has hereunto caused its corporate seal to be affixed, attested by its president and secretary, this day of A. D. 18 .

President.

[CORPORATE SEAL.]

Secretary.

State of Pennsylvania, } *ss:*
County of }

Be it remembered, That on the day of A. D. 189 , before me in and for said county, personally appeared , president, and secretary, of the above-named corporation who, being duly sworn

depose and say, that they were personally present at the execution of the above-written certificate, and saw the common seal of the said corporation duly affixed thereto, and that the seal so affixed thereto is the common and corporate seal of the said company, and that the above-written instrument or certificate was duly signed, sealed, and delivered by and as and for the act and deed of the said company for the uses and purposes therein mentioned; and that the names of these deponents, subscribed to the said certificate as the president and as the secretary of the said corporation, in attestation of the due execution and delivery of the said certificate, are of these deponents' own proper and respective handwriting.

Sworn and subscribed before me the day and year above written.

Witness my hand and seal.

[SEAL.]

[Indorsed on Certificate.]

Executive Department, Office of the Governor.

Harrisburg, 189 .

I hereby approve of the within acceptance and direct that letters-patent issue according to law.

Governor.

Filed in the office of the Secretary of the Commonwealth this day of A. D. 18 .

Secretary of the Commonwealth.

X. Certificate for Foreign Corporation Becoming Domestic.

To His Excellency,

The Governor of the Commonwealth of Pennsylvania.

SIR:—In compliance with the requirements of an Act of the General Assembly of the Commonwealth of Pennsyl-

vania, entitled "An act to authorize foreign corporations to become corporations of Pennsylvania, and to prescribe the mode of their so doing," approved June 9, 1881: The undersigned, The a corporation created under the laws of the State of doing business in the Commonwealth of Pennsylvania, having [three or more] stockholders who are citizens of Pennsylvania and being embraced within corporations of the second class, as defined in Section 2 of an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29, A. D. 1874, and desiring to become a corporation of the State of Pennsylvania, and that letters-patent therefor may issue to it and its successors according to law, hereby certifies:

I. The name of the corporation is

II. Said corporation is formed for the purpose of

III. The business of said corporation is to be transacted in

IV. The term for which the said corporation is to exist is

V. The names and residences of the stockholders and the number of shares held by each, are as follows:

NAME.	RESIDENCE.	NO. OF SHARES.

VI. The number of directors of the said corporation is and the names and residences of the directors elected for the current year are as follows:

NAME.	RESIDENCE.

VII. The amount of the capital stock of said corporation is $, divided into shares of the par value of $, and $, being ten per centum of the capital stock, has been paid in cash to the treasurer of said corporation, whose name and residence are

VIII. The legislation under which the corporation was originally created was

IX. The present financial condition of the said corporation is

a. Capital stock paid in
b. Funded debt
c. Floating debt
d. Estimated value of property
e. Cash assets.

[L. S.]

President.

Attest:

Secretary.

I president of do hereby certify that at a meeting of the stockholders of the said company held pursuant to due and legal notice at the office of the company in on the day of A. D. 189 , a majority in interest of the said corporation, viz.: the holders of shares of stock, adopted the following resolution:

Resolved, That the stockholders of this company do hereby consent to the application for a charter under the laws of the Commonwealth of Pennsylvania, and the president and secretary be and they are hereby authorized to affix the corporate seal thereto; and that this corporation do renounce its original charter and all privileges not enjoyed by corporations of its class under the laws of the Commonwealth of Pennsylvania aforesaid.

In testimony whereof I have set my hand and caused the seal of the said corporation to be affixed this day of A. D. 189 .

[L. S.]

President.

Attest:

Secretary.

State of Pennsylvania, } *ss:*
County of }

Before me, the recorder of deeds in and for the county of aforesaid, personally came three of the directors of the aforesaid, who in due form of law acknowledged the foregoing instrument to be the act and deed of the said corporation for the purposes therein specified.

Witness my hand and seal of office, the day of A. D. 189 .

[SEAL.]

Recorder.

State of Pennsylvania, } *ss:*
County of }

Personally appeared before me, this day of A. D. 18 , the above named who being duly sworn according to law, depose and say that they are directors of the , and that the statements contained in the foregoing instrument are true.

Sworn and subscribed before me, this day of A. D. 189 .

[SEAL.]

Recorder.

[Indorsed.]

EXECUTIVE CHAMBER.

Harrisburg, 189 .

To the Secretary of the Commonwealth:

Having examined the within application and found it to be in proper form, and within the purposes of the class of corporations specified in Section 2 of the act, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29, A. D. 1874, I hereby approve the same, and direct that letters-patent issue according to law.

Governor.

[Indorsed.]

SECRETARY'S OFFICE.

Pennsylvania, *ss.*

Enrolled in Charter Book No. , page

Witness my hand and seal of office at Harrisburg, this day of A. D. 189 .

[SEAL.]

Secretary of the Commonwealth.

Recorded in the office for the recording of deeds, etc., in and for the county of in Book page , etc.

Witness my hand and seal of office this day of A. D. 189 .

Recorder of Deeds.

[L. S.]

XI. Statement by Foreign Corporation.

To the Secretary of the Commonwealth of Pennsylvania.

SIR:—In pursuance to the Act of Assembly of Pennsylvania, approved April 22, 1874, entitled "An act to prohibit foreign corporations from doing business in Pennsylvania, without having known places of business and authorized agents,"

I, president of a foreign corporation, do hereby certify:

That the title of said corporation is

That it is incorporated under the laws of the State of , with its principal office at

The object of said corporation is

The office of said corporation in the Commonwealth of Pennsylvania has been established at in the county of in said Commonwealth.

The name of its duly authorized agent to transact its business at said office is

In testimony whereof, I have hereunto set my hand and

caused the seal of said company to be affixed this day of A. D. 189 .

[CORPORATE SEAL.]

President or Secretary.[19]

XII. Certificate of Secretary of Commonwealth as to Foreign Corporation.

STATE OF PENNSYLVANIA.

Office of the Secretary of the Commonwealth.

To all to whom these presents shall come, greeting:

It is hereby certified, That on the day of A. D. 189 , in pursuance of an Act of the General Assembly of the Commonwealth of Pennsylvania, approved April 22, A. D. 1874, entitled "An act to prohibit foreign corporations from doing business in Pennsylvania without having known places of business and authorized agents,"

a foreign corporation, filed in the office of the secretary of the Commonwealth, a certificate under the seal of said corporation, signed by the thereof, stating:

That it is incorporated under the laws of the State of , with its principal office at

That its object

That its office in the Commonwealth of Pennsylvania located at

That its authorized agent in charge of its business in said Commonwealth

In testimony whereof, I have hereunto set my hand and caused the seal of the Commonwealth to be affixed the day and year above written.

Secretary of the Commonwealth.

[SEAL.]

[19] The fee for filing this statement is $10.75. All remittances for fees must be made in cash, money order, certified check, or draft.

XIII. Proceedings for Dissolution of Corporation.

To the Honorable the Judges of the Court of Common Pleas of County:

The petition of the company respectfully represents:

That it is a corporation duly incorporated under the provisions of the Act of Assembly of the Commonwealth of Pennsylvania, entitled , approved , 18 , and that the principal operations of said corporation are conducted at , in the county of

That at a meeting duly convened it was resolved, a majority of the stockholders consenting thereto, to apply to the said court for a decree of dissolution of the said corporation.

That the said corporation has no debts or liabilities, and that all taxes due the Commonwealth of Pennsylvania have been fully paid into the State treasury, as appears by the certificate of the auditor-general, State treasurer, and attorney-general to that effect, filed herewith.

That notice of this application has been given by publication in , being two newspapers published in the county of , in accordance with the Act of Assembly, in such cases made and provided, being the county in which the principal operations of the corporation are conducted [or in which its principal office is located].

Wherefore, your petitioner showing to the court that the prayer hereof may be granted without prejudice to the public welfare, or the interests of the corporators, prays the court for permission to surrender the powers contained in its charter, and that a decree may be made for the dissolution of the corporation.

The Company,

[SEAL.] By

President.

Attest:

Secretary.

State of Pennsylvania, } *ss:*
County of }

being duly sworn, says that he is the secretary of the petitioner, and that the statements made in the foregoing petition are just and true; that the seal of the corporation affixed to the said petition is the common and corporate seal of the said corporation, and that the petition aforesaid was signed by and with the consent of a majority of a meeting of the corporators duly convened, and that the notice of this application has been given by publication as required by law in the and newspapers of general circulation published in said county, and also in as required by the Act of Assembly in such case made and provided. A copy of the said notice is hereto annexed.

Sworn and subscribed before me,
this day of

[SEAL.]

DECREE.

And now this day of A. D. 189 , the petition of for a degree for the dissolution of the said corporation and the approval of the accounts of the directors thereof having been duly presented, and proof having been made that notice of such application has been duly given by publication according to law, and it appearing by the proper certificates of the auditor-general, State treasurer, and attorney-general filed that all taxes due the Commonwealth of Pennsylvania have been paid, and it further appearing that the prayer of the said petition may be granted without prejudice to the public welfare or the interests of the corporators, it is on motion of Esq., for petitioner, ordered and decreed that the accounts of the directors of the said corporation filed with the petition aforesaid be and the same are approved and confirmed, and that

the said corporation be and the same is hereby dissolved, and all and singular its powers, franchises, and privileges be and the same are hereby extinguished and determined: Provided, That this decree shall not go into effect until a certified copy thereof be filed and recorded in the office of the Secretary of the Commonwealth.

Per curiam.

XIV. By-Laws.

(*a*) BY-LAWS OF A MANUFACTURING COMPANY.

Article I.—Directors.

Section 1. The board of directors shall consist of five persons, to be elected annually. If a vacancy occurs in the board from any cause, the remaining directors shall have power to elect a director to fill such vacancy until the next succeeding election, or until a successor be duly elected or qualified.

Sec. 2. The board of directors shall hold meetings at such time and places as may to them seem necessary or advisable; and they shall have power to delegate, from time to time, such authority as they may deem necessary to any one or more members of the board, acting as a committee, in order that the business of the company may be transacted with promptness and dispatch. The president shall ex officio be a member of all standing committees.

Sec. 3. The stated meetings of the board shall be held on the of each month, at such time and place as the board may from time to time designate, and may be adjourned by the members present to any other time and place. Special meetings may be called at any time by the president, or two members of the board of directors. A majority of the directors shall constitute a quorum for the transaction of business.

Sec. 4. The order of business shall be as follows:

1. When there is a quorum present the president shall call the board to order.
2. The minutes of the previous stated meeting shall be read and considered approved if there is no motion to amend.
3. Reports of Committees.
4. Reports of officers of the company.

5. Miscellaneous business.
6. Unfinished business.
7. New business.

Sec. 5. The board of directors shall have the right to establish such rules and regulations for the conduct of business, and from time to time to alter and amend the same, as to them may seem proper.

Sec. 6. There shall be appointed annually by the president, as soon as possible after the first stated meeting of the board, a finance committee and an executive committee. The president shall also have the power to fill from time to time all vacancies in the said committees.

Sec. 7. The finance committee shall consist of two persons besides the president, and it shall be the duty of the committee to examine at such periods as they may deem needful the accounts of the treasurer, and attend generally to such financial matters as may be devolved upon them by the board.

Sec. 8. The executive committee shall consist of two persons besides the president, and it shall be the duty of the committee to take charge of all matters relating to the business of the board, referred to them by the board, and generally to attend to all such matters as may be devolved upon them by the board.

Sec. 9. These committees shall hold meetings at such times and places as they shall determine, and the meetings of the committees may also be called by the president. A majority of a committee shall constitute a quorum.

Sec. 10. These committees shall report all their actions to the board at its stated meetings.

Sec. 11. The board of directors shall have and exercise all the powers or authority granted by law to the company, except in such matters as may be specifically excepted by the charter or by-laws, and they are empowered to devise and carry into execution any agreements and contracts, and to do all things lawful, which in their opinion are expedient to be done in the management of the company.

Article II.—Officers.

Section 1. The officers of the company to be elected by the board of directors shall consist of a president, a vice-presi-

dent, a secretary, and a treasurer. The offices of secretary and treasurer may be filled by one person.

Sec. 2. The board of directors shall appoint, to hold during its pleasure, the subordinate officers and agents of the company, prescribe their compensation, and take from them such bonds with security as they may deem fit.

Article III.—Duties of the President.

Section 1. The president shall preside at all meetings of the board of directors, preserve order, regulate debate according to parliamentary rules, appoint all committees as recommended by the board. In his absence or inability to act, the vice-president shall discharge his duties, and in the absence or inability of both of them, a president pro tem. may be appointed to discharge the duties of president. He shall have general supervision of the affairs of the company, and attend generally to its executive business, and shall have full authority to appoint or discharge any agent or employee, and shall prescribe the duties of officers and employees, when not otherwise provided.

Sec. 2. The "absence or inability to act" which shall authorize the substitution of vice-president or president pro tem, under this (or the next succeeding article), shall, as to the duties to be performed in meetings of the board, be deemed to mean absence from or inability to act at meetings of the board duly called and held; and as to other duties of the president shall be deemed to mean: (1) Absence from the United States; (2) Absence from his usual office or place of business, accompanied by a request to the vice-president to discharge his duties, or to the board to appoint a president pro tem.; and (3) Inability on account of sickness or other infirmity.

Article IV.—Duties of the Vice-President.

The vice-president shall, in the absence of the president, discharge the duties of the president.

Article V.—Duties of the Secretary.

The secretary shall, under the direction of the president, be present at all meetings of the board, keep a regular record of proceedings in a suitable book for preservation; notify the

stockholders and members of the board of directors of all regular and special meetings; have charge of the corporate seal and of the books, maps, letters, and papers of the company; have charge of the transfers of stock, the registry of bonds, and of the executing and recording of all deeds, etc.; and perform all the duties which are customary and incident to the office of secretary in like companies.

Article VI.—Duties of the Treasurer.

The treasurer shall, under the direction of the president, have general charge of the funds of the company, and make such reports of the receipts and disbursements, in such form and detail as the board may direct.

Article VII.—Elections.

All elections for officers shall be by ballot in the manner prescribed by law.

Article VIII.—Principal Office.

The principal office of the company shall be at in the State of Pennsylvania, but the board of directors may establish a branch office or offices in any other place or places in the State of Pennsylvania, or elsewhere.

Article IX.—Meetings of the Stockholders.

Section 1. The annual meeting for the election of directors shall be held at the principal office of the company on the day of in every year, and the directors elected shall organize as soon as possible thereafter, and hold their offices until their successors are elected and qualified.

Sec. 2. Special meetings of the stockholders may be called at any time by the president or a majority of the board of directors. At least ten days' notice shall be given by the secretary of the time and place of holding any special meeting of the stockholders in such manner as the board may direct.

Sec. 3. The holders of a majority of the stock issued shall constitute a quorum for the transaction of business at any regular or special meeting. If no quorum be present at any

meeting so called, a less number may meet and adjourn, from time to time, until a quorum be present.

Sec. 4. Stockholders may vote at any meeting, either in person or by proxy; but all proxies shall be in writing. Partnerships may sign in the firm name of the partnership, and the signature of the firm by any member thereof shall be valid. Corporations may execute their proxies by the signature of the president, attested by the secretary and the corporate seal of the company.

Article X.—Certificates of Stock.

Certificates of stock shall be issued to the stockholders and transfers of them made by the secretary when required. The certificates shall be signed by the president, authenticated by the seal of the company and countersigned by the treasurer. A registrar of the stock may be appointed by the board of directors. Transfers shall be made in person or by power of attorney on the books of the company on surrender of the certificates. The certificates shall be in such form as may be adopted by the stockholders, and the stockholders shall have full authority to change and modify from time to time such form.

Article XI.—Amendments.

Amendments of the by-laws may be made at any stated or special meeting of the stockholders: Provided, that no amendment shall be made at a special meeting unless the notice of the meeting shall specify the amendment as the purpose or one of the purposes of the meeting.

(*b*) BY-LAWS OF A TRUST COMPANY.

Article I.—Annual Meetings.

The annual meeting of the stockholders shall be held at the office of this corporation on in each year, at 3 o'clock P. M. At such meeting the stockholders present shall constitute a quorum.

Article II.—Directors.

Section 1. The board of directors shall consist of fifteen members, who shall be divided into three classes of five each; and, at the first annual meeting after organization, the five

in the first class shall be elected to serve for one year, the five in the second class shall be elected to serve for two years, and the five in the third class shall be elected to serve for three years; and thereafter, at each annual meeting, five directors shall be elected to serve for three years, and to take the place of those whose terms shall then expire.

The directors shall be elected by the stockholders at the annual meeting, between the hours of and P. M. (provided, that the polls shall not be closed while any stockholder is present and offering to vote). Notice of such meeting and election shall be given in two daily newspapers of general circulation, published in at least one week before the time appointed therefor; and written or printed notice thereof shall be mailed to the last recorded address of each stockholder.

Sec. 2. The election shall be by ballot; and each share shall entitle the holder thereof, or his proxy, to one vote for each of the directors to be elected, or to cumulate his votes on one or more of them. At the first annual meeting after organization, at which fifteen directors are to be elected in three classes of five each, there shall be three polls taken—one for five directors of the first class; one for five directors of the second class, and one for five directors of the third class; and at each poll so taken each share shall entitle the holder thereof, or his proxy, to one vote for each of the five directors of the class to be then elected, or to cumulate his votes on one or more of the five directors of the said class.

Sec. 3. The board of directors shall designate three stockholders, not members of their body, and who are not candidates, who shall conduct the elections.

Sec. 4. The stated meetings of the board of directors shall be held on of each week. Eight directors shall constitute a quorum.

Sec. 5. The board of directors shall have power to fill vacancies; and any one elected by the board to fill a vacancy shall hold his position as director until the next annual meeting.

Article III.—Election of Officers.

Section 1. The directors after their election shall choose one of their number to be president. They shall also elect a vice-president, a secretary, a treasurer, and such other officers as may be necessary for the transaction of the busi-

ness of the corporation, whose duties not otherwise herein expressed shall be prescribed by the board of directors, and no office except that of president and vice-president shall be held by a director. The duties of the secretary and treasurer may be performed by one person.

Sec. 2. The board of directors shall have power at any regular meeting by a vote of not less than two-thirds of the said board, to remove the president and any vice-president, as well as the subordinate officers of the corporation, and to appoint others in their places.

Article IV.—Special Meetings.

Section 1. Special meetings of the stockholders may be called by the directors at any time, and shall be called by the president at the written request of not less than fifteen stockholders, stating the object of the proposed meeting; and at all special meetings a majority in interest of the stockholders shall constitute a quorum.

Sec. 2. Notices of such meetings shall be inserted in two daily newspapers of general circulation, published in the at least one week before any such meeting, and written or printed notice thereof shall also be mailed to the last recorded address of each stockholder.

Sec. 3. Special meetings of the board of directors may be called by the president whenever necessary, and shall be called by the secretary at the written request of three members of the board.

Article V.—The President.

The president shall preside at all meetings of the board of directors, and be, ex officio, a member of all committees. He shall supervise the general business of the company. He shall inform the directors at every stated meeting of the condition of the company, and perform all other acts belonging to the executive officer of the corporation.

He shall have custody of the security furnished by the treasurer.

He shall sign all certificates of stock, and all other papers as may be directed by resolution of the board.

Article VI.—The Vice-President.

The vice-president, in the absence of the president, shall

perform the duties and exercise all the powers of the president.

Article VII.—The Secretary.

The secretary shall keep minutes of the board meetings. He shall issue notices of the meetings to the directors and committees, and perform such other duties as may be assigned him by the board of directors, or the president.

The offices of secretary and treasurer may be held by the same person.

Article VIII.—The Treasurer.

The treasurer shall give such security as shall be required by the board for the faithful performance of his duties.

He shall collect and receive all moneys, revenues, and securities belonging to the company, except his own security, and shall deposit the same in such financial institutions as shall be ordered by the directors.

He shall pay out no moneys except when authorized by the board so to do, and all checks drawn shall be countersigned by the president, or in his absence by the vice-president.

He shall produce to the board at every meeting his check book, bank book, and, at least once a month, shall produce said bank book duly settled.

He shall sign all certificates of stock and keep account thereof.

He shall report all overdue loans at each meeting of the board.

Article IX.—Finance Committee.

Section 1. The board shall appoint a finance committee of three directors, who shall have supervision of all loans and investments.

Sec. 2. No loans or investments of funds of the company shall be made except under such directions as the board may prescribe.

Article X.—Stock.

Section 1. All certificates of stock shall be signed by the president, and countersigned by the treasurer, and shall be registered as directed by the board of directors.

Sec. 2. The stock of the company shall be transferable at the office of the company, either in person or by attorney

properly appointed, and no transfer shall be allowed unless the old certificate be surrendered, and it shall thereupon be canceled.

In case a stockholder shall apply for a renewal of a lost certificate of the capital stock of the company, he shall give sixty days' notice of such application by advertisement once a week in one or more of the daily newspapers published in or elsewhere, as may be directed by the officers of the company, and if no adverse claimant of said stock appear within ten days after the expiration of such notice a new certificate may be issued to replace the old one: Provided, a bond of indemnity with satisfactory security be given to the company, and one copy of the newspaper containing the advertisement be filed therewith.

Sec. 3. The transfer book shall be closed for ten days immediately preceding the date of payment of any dividend.

Article XI.—Order of Business.

Section 1. At the stated meetings of the board of directors the order of business shall be:

1. Roll call.
2. Reading and approval of minutes.
3. Unfinished business.
4. Reports of officers.
5. Reports of committees.
6. New business.

Sec. 2. The order of business at stockholders' meetings shall be as follows:

Roll call.
Reading of minutes.
Reports.
Deferred business.
Selection of auditing committee.
New business.
Nominations.
Election of tellers.
Election of directors.

Article XII.—Amendments.

Section 1. Amendments of these by-laws can only be made by a stock vote of two-thirds of the stock voted at a meeting

called for the purpose, and in the manner prescribed by the by-laws: Provided, that thirty days' notice of the proposed amendments shall have been mailed to the last recorded address of each stockholder as furnished to the secretary, and that the same shall have been submitted to the board of directors thirty days previous to the said meeting.

(*c*) BY-LAWS OF A CLUB.

Article I.—Name.

This club is incorporated for social purposes, and its corporate name is

Article II.—Officers.

Section 1. The officers of the club shall be a president, a vice-president, a secretary, a treasurer, and twelve members, who shall constitute, together with the officers, the board of governors.

Sec. 2. The president, vice-president, secretary, treasurer, and four members of the board of governors shall be elected at the annual meeting. The president, vice-president, secretary, and treasurer shall hold office for the term of one year, and the members of the board of governors for the term of three years, from the first of January, next following, or until their successors are chosen.

Sec. 3. In case of the death, resignation, or disability of the secretary or treasurer, the vacancy for the unexpired term shall be filled by the board of governors. If any vacancy shall occur in the board of governors, such vacancy shall be supplied by the board until the next annual meeting.

Sec. 4. Non-resident members shall not be eligible to hold office in the club.

Article III.—President and Vice-President.

Section 1. The president shall preside at the meetings of the club and of the board of governors. He shall, with the secretary, sign all written contracts of the club, and shall perform such other duties as the club or board of governors may assign to him.

Sec. 2. In the absence of the president the vice-president shall perform his duties.

Article IV.—Secretary.

The secretary shall give notice of all meetings of the club and of the board of governors. He shall conduct the correspondence and keep the records of the club. He shall furnish the treasurer with the names of all persons elected to membership, and shall be the keeper of the seal of the club. He shall notify persons elected to membership of their election.

Article V.—Treasurer.

The treasurer shall collect all fees and dues, and shall keep the same in a bank account in the name of the club. He shall keep the accounts of the club, and shall report thereon at each regular meeting of the board of governors. His accounts shall be audited annually. He shall pay all bills on the certificate of their correctness by the board of governors or by the house committee. He shall give such security as the board of governors may require.

Article VI.—Board of Governors.

Section 1. The board of governors shall have general charge of the affairs, funds, and property of the club, and shall carry out the purposes of the club according to the law and these by-laws.

Sec. 2. The board of governors shall meet once a month, except during the months of July and August, and special meetings shall be called by order of the president or of the house committee, or upon the written request of any two members of the board. Nine members shall constitute a quorum of the board of goveronrs.

Sec. 3. The board of governors shall submit at each annual meeting a general report of the affairs of the club, with an estimate for the ensuing year, which shall be printed and distributed to the members five days before the annual meeting. They shall report at other times if required.

Sec. 4. The board of governors shall prescribe house rules, and rules for the admission of strangers to the privileges of

the club. They shall have power to frame rules for their own regulation and government.

Article VII.—Committees.

Section 1. The board of governors shall elect from its own number a house committee and a library committee.

Sec. 2. The house committee, subject to the direction and control of the board of governors, shall have charge of the club-house. They shall employ and remove employees, receive the complaints of members, and report upon them to the board of governors, and from time to time procure such articles as may be necessary for the use and convenience of members. They shall have power to make rules for their own regulation and government.

Sec. 3. The library committee, under the direction of the board of governors, shall have charge of all books, papers, and works of art belonging to the club. They shall have power to solicit and receive donations for, and to select and purchase all books, periodicals, papers, and works of art for the club.

Article VIII.—Committee on Admissions.

The committee on admissions shall consist of nine members, three of whom shall be chosen by ballot at the annual meeting, and shall serve for the period of three years from the first of January following, or until their successors are chosen; and the retiring members shall not be eligible for re-election for the period of one year. Five members shall constitute a quorum at all meetings of the committee. Two negative votes shall be a rejection of a candidate. A candidate for membership shall be proposed to the committee by any member of the club. If the committee shall decide to receive the person proposed as a candidate, it shall cause his name, address, with the name of the member proposing, to be posted in a conspicuous place in the club-house for at least two weeks, after which time the committee may elect him a member of the club. On the election of a candidate the committee shall notify the secretary of the club of the same. The committee shall have power to make further rules for its own regulation and government, and to fill vacancies occurring through death, disability, or resignation of its members for the residue of the term of such members.

Article IX.—Membership.

Section 1. The membership of the club shall consist of resident and non-resident members. No person residing within miles of the city of shall be a resident member. The number of resident members shall not exceed 500.

Sec. 2. A candidate duly elected by the committee on admissions shall, on payment of the entrance fee and dues, become a member of the club, and be entitled to all the privileges of membership: Provided, such payment be made within thirty days of the mailing of the notification of election to his address as given on the posted list of candidates. The election of any candidate who shall fail to make such payment within thirty days, shall become void.

Article X.—Entrance Fees and Dues.

Section 1. The entrance fee shall be $ for resident members, and $ for non-resident members.

Sec. 2. It shall be within the discretion of the board of governors to determine whether an entrance fee shall be imposed in the case of former members re-joining the club.

Sec. 3. The annual dues of resident members shall be $ in advance, which, however, may be paid in two equal instalments on the first days of January and July; and of non-resident members $, payable in advance on the first day of January.

Sec. 4. A resident member who removes his residence and place of business to a distance of at least miles from the city of , on written notice to the treasurer of such removal, may become a non-resident member.

Sec. 5. A non-resident member who changes his residence or place of business to within miles of said city, shall become a resident member, and shall notify the treasurer in writing of such change.

Sec. 6. When the dues of any member remain unpaid for the period of months, the treasurer shall notify him that unless the same are paid within two weeks thereafter his name will be posted as a delinquent, and unless paid within two weeks after such posting, his membership shall cease; and in case such dues be not paid pursuant to such notice, or such default be not accounted for to the satisfaction of the board of

governors, he shall thereupon cease to be a member, and shall forfeit all his interest in any property of the club, whether real or personal.

Article XI.—Resignations.

All resignations must be presented in writing to the secretary of the club. No resignation shall be received from any member in arrears to the club.

Article XII.—Suspension and Expulsion.

Any member may be suspended or expelled for the willful infraction of any by-law or house rule, or for acts or conduct which may be deemed disorderly or injurious to the interests or hostile to the objects of the club, by a vote of three-fourths of the members of the board of governors present at the meeting: Provided, that at least seven votes are cast in favor of such suspension or expulsion, and that one month's previous notice in writing has been given to the member, together with a copy of the charges preferred against him, and an opportunity afforded him for a hearing, either before the board of governors or a committee of the same, as he may elect.

Article XIII.—Meetings and Elections.

Section 1. There shall be an annual meeting of the club on the day of of each year, at eight o'clock in the evening, except when such day falls on Sunday, when the meeting shall be held on the following Monday. At the annual meeting a president, a vice-president, a secretary, a treasurer, three members of the board of governors, and three members of the committee on admissions shall be elected by ballot. Vacancies in other classes of the board of governors or trustees shall also be filled by ballot at such meeting. In all cases a majority of all the votes cast shall be necessary to elect.

Sec. 2. The order of business at the annual meeting shall be:

1. Reading of the minutes of the last annual meeting and of special meetings held subsequent thereto.
2. Elections.
3. Report of the board of governors.
4. Report of the treasurer.

5. Reports of special committees.
6. Unfinished and referred business.
7. New business.
8. Adjournment.

This order of business may be changed at any meeting by a two-thirds vote of the members present.

Sec. 3. Upon the written request of twenty-five members, or at the request of the board of governors, the president shall call a special meeting of the club. This request, as also the notice of any special meeting, shall state the object for which the meeting is called, and at a special meeting no subject not so stated shall be considered. Notices of any meeting, whether annual or special, shall be posted in the club-house for one week. Twenty-five members shall constitute a quorum at any meeting of the club. No stranger or visitor shall be admitted to any meeting of the club.

Sec. 4. The secretary shall post in the club-house, on the day of in each year, a list of the offices to be filled at the annual election. Nominations for such offices shall be made in writing, signed by at least five members of the club in good standing, addressed to the secretary, and deposited in his letter-box in the club-house not later than the thirtieth day of November; and no name not thus placed in nomination shall be voted on at the meeting.

Sec. 5. The secretary shall, on the first day of post the nominations in the club-house, and have them printed in ballot form, the nominees for each office to be in alphabetical order, and officers re-nominated indicated by an asterisk. He shall mail a ballot to each member of the club, with notice of the meeting, and have a supply of the same at the meeting for the use of members, and no other form of ballot shall be circulated in the club-house or accepted at the polls.

Article XIV.—Card Playing.

No round or banking games of cards shall be allowed in the club-house.

Article XV.—Amendment.

These by-laws may be amended at any meeting of the club, annual or special, by a vote of two-thirds of the members present. Notices of the proposed amendments shall be furnished to the secretary and posted in a conspicuous place

in the club-house at least twenty days before the meeting at which it is proposed to consider them; and the secretary shall cause such notices to be printed and sent to each member at least seven days before such meeting.

(*d*) BY-LAWS OF A BUILDING AND LOAN ASSOCIATION.

Article I.—Title and Object.

This association shall be known by the name and style of
and shall have for its object the accumulation of a fund by the periodical contributions of the members thereof, and of safely investing the same.

Article II.—Stocks.

Section 1. The stockholders of this association shall be persons of the full age of twenty-one years; women may hold stock in their own right, and minors by trustee.

Sec. 2. When each share of stock of a series becomes worth two hundred ($200) dollars, said series shall close, but payment on the same shall not be considered due until the funds by law applicable to that purpose are sufficient to meet and liquidate the same, according to Article VII of these by-laws.

Article III.—Officers.

Section 1. The officers of this association shall consist of a president, first and second vice-presidents, secretary, treasurer, solicitor, and twelve directors, all of whom must be stockholders.

Sec. 2. The president, vice-presidents, secretary, treasurer, and twelve directors shall constitute the board of directors. They shall all be nominated (after the first election) at the stated meeting of the board of directors in December of each year, and elected at the annual meeting of stockholders in January of each year, and in case of a vacancy of any of said offices mentioned in Section 1 of this Article, by death, resignation, or otherwise, such vacancy shall be filled by the board of directors.

Sec. 3. The solicitor shall be nominated (after the first election) at the last stated meeting of the board of directors

in December of each year, and elected by the stockholders at the annual meeting in January of each year.

Sec. 4. All elections shall be by ballot, and the candidates receiving the highest number of votes cast shall be declared duly elected. The right of nomination shall extend to stockholders in general, and at all elections each stockholder shall be entitled to one vote, and no more. In no case shall any person be permitted to vote by proxy, or who has not paid up all arrearages of dues, fines, interest, premium, or other charges.

Article IV.—Dues and Fines.

Section 1. Each stockholder, for each share of stock that they may hold in this association, shall pay the sum of twenty-five cents as an entrance fee, and also the further sum of one dollar on each share, at the regular stated meeting of each month, until the dues and profits will divide to each share the sum of two hundred dollars.

Sec. 2. On all advance payments of six months, or over, interest will be allowed, under such regulations as the board of directors may direct from time to time.

Sec. 3. Members neglecting to make payment of dues, interest, and premiums shall be fined two per cent. per month on all arrearages. But no fine shall in any case be charged on fines.

Article V.—Loans.

Section 1. Each share of stock shall entitle the holder thereof to a loan of the full amount of two hundred dollars.

Sec. 2. The money shall be sold at the regular monthly meeting of the association to the highest bidder, and the bids shall be by cents per share.

Sec. 3. Whenever a stockholder shall have become a successful bidder, or otherwise entitled to a loan, he shall assure to the association the repayment of his loan, as well as the dues, interest, and premium, by such security as is required by Section 4 of this Article, and he shall also transfer to the association as collateral security the same number of shares as he shall borrow on from the association; and the interest and premium shall commence from the time the money shall be sold, and the same shall be charged only on the amount in hand.

Sec. 4. Real estate in any part of the State of Pennsyl-

vania, mortgages, and ground rents, also bonds issued by the United States of America, the Commonwealth of Pennsylvania, or by the city of Philadelphia, or the stock of this association, may be taken as security for loans, provided that the board of directors approve of the sufficiency and nature of such security: Provided, also, that no loan shall be made on any property upon which a prior mortgage or ground rent exists, exceeding one-third its value, unless approved of by three-fourths of the board present.

Sec. 5. A borrower may repay a loan at any time; such borrower paying all expenses attending the cancelling of the mortgage or judgment, together with all the arrearages of dues, interest, premiums, and fines, or either of them, as may appear on the books of the association, including those of the then current month. Any borrower shall have the privilege to refund at any time any portion of the sum borrowed; and if the same amounts to one-quarter of a share, or more, the interest on the same shall cease at the end of the then current month.

Sec. 6. Stockholders who have obtained loans on property upon which there is a prior encumbrance, shall exhibit to the secretary their receipt for the payment of interest or ground rent within one month after it has become due, and on failure to produce the same after notice by the secretary, shall pay a penalty of five dollars, to be charged against his or her account, and in case of failure to pay such ground rent, or interest, or the taxes when due, proceedings may be had upon the security for the loan, in like manner as is provided by law in case of the non-payment of instalments or interest.

Article VI.—Interest.

Stockholders having taken loans from this association shall pay interest for the same at the rate of six per cent. per annum. The board of directors may compel payment of the principal, interest, fines, and premium of any stockholder who is six months or more in arrears by proceeding according to law.

Article VII.—Withdrawals of Stock.

Section 1. Any stockholder, on giving thirty days' notice, may return to the association any stock held by him or her,

and receive therefrom the full amount of money paid in as dues on such stock, less all fines, forfeitures, and charges, and a due proportion of all losses incurred; but at no time shall more than one-half of the funds in the treasury of the association be applied to the demands upon stock returned, without the consent of the board of directors, and no stockholder shall be entitled to return any stock held in pledge, or as security: Provided, that stockholders withdrawing after the association shall been in existence one year, shall receive such interest or proportion of the profits as may be determined by the board of directors, or by the stockholders at any annual meeting.

Sec. 2. On the death of a member not having a loan from the association, the legal representatives shall be entitled to an order for the dues paid in by such deceased member. And in addition thereto, the same amount as is provided for withdrawing stockholders, or to transfer the stock standing in the name of the deceased member, or to continue the right of membership by continuing the monthly payments.

Article VIII.

Section 1. Transfer of stock, to enable a stockholder to vote, must be *bona fide*, and made at least one month before an election.

Sec. 2. Transfers of stock, to be valid, must be made upon the transfer books of the association in the presence of the secretary, or a member of the board of directors designated by him.

Sec. 3. In the event of there being no borrowers, so that the funds in the treasury would remain idle and unproductive, the non-borrowing stockholders of the oldest series may be required to take funds, either by borrowing or withdrawing under such provisions as shall be adopted by the board of directors.

Sec. 4. In case any stockholder not having taken a loan shall neglect or refuse to pay the monthly dues or fines for the space of six months, he shall receive from the association the withdrawal value of said stock, less all fines and forfeitures that may be charged against them, and also a proportion of all losses incurred, and the stock shall revert to the association.

Article IX.—Duties of Officers.

Section 1. *President.* The president shall preside at all meetings of this association, and at the meetings of the board of directors. He shall sign all orders on the treasurer for the payment of money when so ordered by the board of directors, and not otherwise. He shall appoint all committees unless otherwise provided for. He shall also have custody of the treasurer's bond.

Sec. 2. *Vice-Presidents.* The vice-presidents shall perform all the duties of the president in his absence in the order of their election, and shall be subject to the same rules.

Sec. 3. *Secretary.* The duties of the secretary shall be to keep accurate minutes of the meetings of the association and of the board of directors, and he shall record the same in a book or books kept for that purpose. He shall receive all moneys and pay the same to the treasurer; keep accurate accounts of all the stockholders, attest all orders drawn on the treasurer for the payment of money, when so ordered by the board of directors; he shall have in charge the seal and all the books and papers belonging to the association, not appertaining to any other office; he shall be prepared at all times to inform the stockholders of the state of the financial affairs of the association. And at the annual meeting of the stockholders he shall furnish a detailed statement of the finances, and prepare the same for publication, if so desired, and he shall be prepared, immediately after an election, to deliver to his successor in office all books and papers in his charge. He shall give such security for the faithful performance of his duties as the board of directors shall require, and shall be entitled to receive such salary as the board of directors shall prescribe. He shall have power to call special meetings of the board when requested to do so in writing by at least three of the directors, and shall perform all other duties pertaining to his office.

Sec. 4. *Treasurer.* The duties of the treasurer shall be to receive and take charge of all moneys paid into the association, to pay all orders drawn on him by order of the board of directors, when signed by the president and attested by the secretary; he shall give bonds for the faithful performance of his duty, before entering thereon, in such sum as may be fixed by the board of directors; he shall receive and hold in trust all bonds, mortgages, policies of insurance, etc., upon

all property upon which money is loaned by the association, and at the expiration of his term of service he shall deliver to his successor in office all moneys, books, and papers in his possession. And for the faithful performance of his duties shall receive such compensation as may be determined by the board of directors.

Sec. 5. *Solicitor.* The solicitor shall be a member of the bar, and his duties shall be to examine all title-deeds, and make the necessary searches for ascertaining the title of all properties accepted by the association as mortgage security, and give his opinion thereof; he shall prepare all mortgages, bonds, agreements, and all other writings of a legal nature to be given or taken by this association in the course of its business when required; for all of which he shall receive a fair compensation. His charges for fees and disbursements, in making searches, recording and proving papers, and preparing all mortgages and all other written instruments, and examining papers, titles, and other matters, shall be borne by the party dealing with the corporation in reference to such matters. In all disputes as to the amounts of his charges the same shall be determined by the board of directors.

Sec. 6. *The Board of Directors.* It shall have authority to empower any person or persons to purchase at any judicial sale any real estate upon which the association may have a mortgage, judgment, or encumbrance, if in their opinion the interests of the association should require it. They shall also have full power and authority to sell and dispose of all real estate which may in any manner be acquired by the association.

Sec. 7. Seven members of the board shall constitute a quorum, and they may remove any officer of the board for misconduct or neglect of duty by a two-thirds vote of the whole number of directors.

Article X.—Meetings.

Section 1. The regular stockholders' meeting shall be held on the third Wednesday evening in January in each year for the election of officers and the transaction of such other business as may be connected with the welfare of the association. At these meetings, and all other meetings of the stockholders, fifteen stockholders shall constitute a quorum for the

transaction of business; and the president of the board of directors shall be president of the stockholders' meeting. Special meetings of the stockholders may be called by the secretary when requested by nine or more members; but the object of such meeting shall be distinctly set forth in the notice thereof.

Sec. 2. The regular stated meeting of the board of directors shall be on the evening of the third Wednesday of each month, at such place as they may determine, for the purpose of receiving the dues, interest, premium, and fines of the members, loaning out the money in the treasury, and the transaction of all other business connected with the association not especially assigned to the stockholders. The meeting of the board of directors shall always be open for the admission, and their proceedings for the inspection, of the stockholders.

Article XI.—Committees.

Section 1. *Auditing Committee.* At the stated meeting in December the president shall appoint an auditing committee, consisting of three stockholders, not members of the board, whose duty it shall be to examine the books of the treasurer and secretary, and submit their report in writing.

Sec. 2. *The Property Committee.* At the stated meetings in January, April, July, and October of each year, the president shall appoint three members of the board of directors as a property committee, whose duty it shall be to personally examine and inspect the securities offered for loans, and report, as nearly as possible, the location, size, and character of the same, the amount of insurance thereon, the ground rent or encumbrance, the marketable value of the same, and any other information that can be had, which report shall be made to the board of directors. The fee of the property committee for examining each separate property offered as security shall be $1.

Sec. 3. *Finance Committee.* At the stated meetings in January, April, July, and October of each year the president shall appoint three members of the board of directors as a finance committee, whose duty it shall be to receive the monthly payments from the stockholders at the stated meetings of the board of directors, receipt therefor, and immediately pay the same over to the treasurer.

Article XII.

Lawful money of the United States of America shall in all cases be paid as dues, interest, and premiums.

Article XIII.

These by-laws shall not be altered or amended unless the proposition be submitted in writing at a stated meeting of the board one month previous to the annual or a special meeting of the stockholders called for that purpose, when two-thirds of the members present shall decide.

Order of Business.

1. Roll call.
2. Reading of minutes.
3. Reports of committees.
4. Applications for loans and other communications received.
5. Unfinished business.
6. New business.

Voting.—The yeas and nays shall be taken at the request of two members.

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